

AIRLINE SERVICE IMPROVEMENTS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

APRIL 11, 2007

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ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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AIRLINE SERVICE IMPROVEMENTS

WEDNESDAY, APRIL 11, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:35 p.m. in room SR-253, Russell Senate Office Building, Hon. Daniel K. Inouye, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

The CHAIRMAN. The quality of passenger service offered by our Nation's domestic airlines is an issue all Members of Congress hear about from their constituency regularly. So, this Committee remains active in providing oversight on the issue in an effort to ensure that air carriers maintain an appropriate level of service. This special hearing was asked for by Senator Boxer.

I will ask that my statement be made part of the record.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

The quality of passenger service offered by the Nation's domestic airlines is an issue all Members of Congress hear about from their constituents regularly. This Committee remains active in providing oversight of the issue in an effort to ensure that air carriers maintain an appropriate level of service.

The Commerce Committee first held hearings in the summer of 2000, when air travelers experienced record delays. In 2001 an additional hearing was held to assess the progress airlines had made in addressing the problems highlighted the previous year.

At the time of those hearings, the majority of the Nation's domestic airlines had begun to take a number of voluntary steps to address service quality concerns, in an effort to avoid a legislative mandate. The Air Transport Association's (ATA) member airlines agreed to implement an "Airline Customer Service Commitment" in 1999 which addressed, among other issues, delay notification and on-time baggage delivery provisions.

In its 2001 report, the Department of Transportation (DOT) Inspector General noted that airlines had made some progress on these commitments, but there was still room for improvement.

While service appeared to improve during the past several years, the recent significant growth in airline travel has revealed that these problems remain. Specifically, over the past several months there have been a number of events that have set off alarms about the underlying quality of airline passenger service.

Last December and over Valentine's Day weekend, we had a number of cases where passengers were delayed in planes on the ground for nine or more hours. Further, DOT statistics show February's delays rose to the second highest level ever.

Airlines point out that these problems are primarily attributable to weather or other uncontrollable air traffic operational problems. While weather can be a factor, poor management decisions by air carriers, a problem that is controllable, have also contributed to these problems.

When American Airlines and JetBlue experienced problems earlier this year, the absence of sufficient staff at the right locations was a major factor. US Airways has experienced continuing service issues resulting from computer problems associated with the integration of America West. These types of problems are within the control of the airlines and should be anticipated and managed appropriately.

The solution to these increasing problems with airline service quality is not clear. It appears that the voluntary commitments made by the airlines 8 years ago to improve service are not enough to improve existing conditions, much less sustain quality as capacity continues to increase. Yet, any comprehensive legislative solution risks micromanaging airlines, and possibly creating more problems through a one-size-fits-all approach.

I look forward to hearing our witnesses' perspectives on the issues, and working with them and FAA to find effective solutions.

The CHAIRMAN. May I recognize Ms. Boxer?

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you so very much, Mr. Chairman, for holding this hearing to shed light on an issue recently in the news, airlines trapping passengers on the ground in delayed planes for hours and hours without adequate food, water, or bathrooms. While this problem is not new, it's received increased attention since recent debacles in which airlines failed to properly prepare for adverse weather conditions on Valentine's Day and the New Year's holiday.

Over New Year's Eve weekend, American Airlines had to divert flights because of weather problems at various airports. This isn't uncommon. All of us who travel know that weather can, of course, impact flights. However, what followed was disastrous, and it caused Senator Snowe and I to get together and write bipartisan legislation that we call "A Passenger's Bill of Rights."

Passengers sat trapped on the ground in delayed planes for over 9 hours. Nine hours, Mr. Chairman, with nothing to eat but pretzels, while toilets overflowed and tempers flared.

Six weeks later, a JetBlue airplane sat on the tarmac at JFK Airport in New York for 10 and a half hours. More than half a dozen other JetBlue flights sat on the tarmac for more than 6 hours. Again, for the passengers, the conditions were awful. There wasn't enough food or potable water, and the bathrooms stopped working. Even worse, many passengers were given incomplete or misleading information, or they were refused help, or they were treated indifferently or disrespectfully by airline employees.

Now, I'm sure many of us have been stuck on the tarmac many times. Certainly, it's happened to me on my travels back and forth to California. Sometimes, with weather and security in a post-9/11 world, delays are unavoidable. But it seems to me, and it seems to Senator Snowe and I, that airlines must have a plan to ensure that their passengers, who often include infants and the elderly, are not held what's equivalent to being hostages on a plane for hours and hours.

This is not the first time that Congress has taken a look at the airlines' inability and unwillingness to take responsibility for the well-being of their passengers, who are their bread and butter. In 1999, after a Northwest plane was delayed on the tarmac for 9 hours, with poor conditions, many Members of Congress were outraged, and several introduced comprehensive Passenger Bill of

Rights legislation. While those bills did not become law, the thought of congressional action had a somewhat sobering effect on the airlines, who subsequently agreed to a 12-point, and I quote, "Airline Customer Service Plan," unquote. In the plan, the airlines committed to providing passengers with better information about ticket prices and delays; better efforts to retrieve lost luggage; fairer bumping policies; and to meeting essential needs during long on-aircraft delays. Now, let me reiterate this. The airlines themselves have a 12-point plan called the Airline Customer Service Plan, and on that plan it says that they need to make sure that essential needs are met during long on-aircraft delays.

And we did see some improvements. And we thanked the airlines for that after 1999 and after that 12-point plan. But in recent years, as the industry has grown even more competitive in the post-9/11 environment, airlines are increasingly operating with no margin of error. Planes are completely sold out, gates are continuously utilized, airport facilities and our air traffic control system are stretched thin. This means that when bad weather hits, the airlines can find themselves unable to readily accommodate delays and cancellations. And the results, as we've seen this winter, can be a disaster. That is why, again, Senator Snowe and I introduced the Airline Passengers' Bill of Rights Act of 2007.

The legislation requires airlines to offer passengers the option of safely leaving a plane that they've boarded once that plane has sat on the ground 3 hours after the plane door has closed. So, it's not 3 hours after the departure schedule, but 3 hours after the door has closed.

This legislation also requires airlines to provide passengers with necessities, such as food, potable water, adequate restroom facilities, while a plane is delayed on the ground.

Our legislation provides two exceptions to the 3-hour option. The pilot may decide to not allow passengers to deplane if he or she reasonably believes their safety or security would be at risk due to extreme weather or other emergencies. So, we give the pilot a tremendous amount of discretion here. The pilot.

Alternately, if the pilot reasonably determines the flight will depart within 30 minutes after the 3-hour period, he or she can delay the deplaning option for an additional 30 minutes.

To be clear, the Boxer-Snowe bill does not require the plane to return to the gate, as some have suggested. The passengers can be retrieved with stairs and a bus, as long as it's safe to do so, as was the case of a stranded JetBlue flight at Kennedy. Passenger safety must be the number-one priority. So, if there's dangerous weather, the plane is not safely accessible on the ground, or there are any other safety or security concerns, again, the pilot can choose not to allow the passengers to deplane.

I believe this legislation is common sense and fair. It will benefit consumers, while not hurting airline operations or their revenues. Airlines provide a vital service in a competitive business climate, and we all want them to succeed; I can surely tell you that I do. Indeed, the Federal Government has been a longstanding partner to the aviation industry, providing assistance with airport infrastructure, air traffic control services, and, after the September 11 recovery, straight-out money. But, on the issue of passenger rights

the airline industry is once again urging Congress to stay on the sidelines.

That's exactly what happened in 1999. Back then, Congress gave airlines the benefit of the doubt. We gave them a chance to do right by their customers. This winter's events made clear that airlines have failed to live up to their own promises, that they literally had written down in their own Passenger Bill of Rights.

Now, I do commend the efforts of companies like JetBlue, which responded admirably to this winter's delay by introducing a new Consumer Bill of Rights, their own Customer Bill of Rights. While this was a definite step forward, history shows we must do more.

So, today I'm interested to hear what the Department of Transportation is doing about this problem. They also have a role to play in tracking and following up on consumer complaints and better managing flight operations in bad weather. And I also look forward to hearing from the Air Transport Association to better understand the airlines' concerns. But, most important, I want to hear from the passengers and the consumer groups to understand the human impact when airline operations break down to the extent that they have done so recently.

Mr. Chairman, I thank you so much. I know you have a heavy schedule of hearings. I do appreciate your scheduling this. I thank the Ranking Member, as well.

The CHAIRMAN. I can assure the Senator we're here because we're similarly concerned.

Senator Stevens?

**STATEMENT OF HON. TED STEVENS,
U.S. SENATOR FROM ALASKA**

Senator STEVENS. Mr. Chairman, just put my statement in the record, will you, please? I'd like to hear from the witnesses——

The CHAIRMAN. Without objection, so ordered.

Senator STEVENS.—since I do have some conflicts this afternoon. Thank you.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

I would like to thank Chairman Inouye for calling the hearing today. The topic of improved airline service and airline customer relations has been on many minds the last few months.

Recently, the FAA forecasted that approximately 770 million passengers will fly this year, and more than one billion by the year 2015, and up to 1.2 billion by the year 2020. The sheer number of passengers will be a challenge for the FAA and the airlines to cope with in terms of developing and implementing a modern air traffic control system to meet this demand. For the airlines, an important aspect of the system will have to be the need for improved customer service.

Like many of my colleagues, because of the nature of our business, we tend to travel often and at peak times. Over the years, we have all experienced less than ideal air transport situations. While most of the traveling public has become tolerant of modest flight delays, it is important that the airlines take note of the lessons learned over the past few months and take adequate steps to address the increasing rift between airlines and the traveling public.

It is also important, with traffic rebounding like it is, that the FAA and the Department of Transportation further work and research into predictive weather models and regulatory oversight of the users of the system. They need to take continued steps toward how they manage delays in the aviation system.

While the unintended consequences of legislating the customer service operations of airlines may not be the best route of action, airlines need to take the situation

seriously. As an industry, they should voluntarily update their individual ground operation procedures and emergency situation protocols along with providing vastly improved disclosure of flight data and communication with their customers.

I think we can all agree that delays will never be avoided altogether, but how we deal with them can certainly be improved.

Again, Chairman Inouye, thank you for calling the hearing and I look forward to the testimony.

The CHAIRMAN. Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Mr. Chairman, I, too, would ask that my statement, even though it's very brief, be included in the record. And I would like to make just a couple of comments.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Mr. Chairman, thank you for holding today's hearing.

Airlines are more than just private companies trying to earn a profit.

Airlines are "*public carriers*," which means that they have certain responsibilities when they offer services to everyday travelers.

Weather can delay a flight. But the biggest reason the airlines don't live up to their responsibilities is *poor planning*.

The summer of 2000 was one of the worst on record for delays.

As for airlines themselves, some airlines are using smaller regional jets and *overbooking* them to increase their bottom line. But these fuller, smaller planes end up contributing to the delays.

The end result here is that travelers suffer: They get *stuck* sitting in jets on the *tarmac*, sometimes for *hours* on end.

And there is *no* excuse for not providing those passengers with basic needs such as *food*, *water* and functioning bathrooms.

We thought the industry got the message in 1999. But *apparently not*.

I am a proud cosponsor of Senator Boxer's Passenger Bill of Rights. It's a good start.

Senator LAUTENBERG. I'm delighted to be a cosponsor of Senator Boxer's bill on passenger rights. And I just think back a little bit, what might have happened inside those cabins if I hadn't authored a bill to ban smoking in airplanes. Could you imagine the battle between the smokers and the nonsmokers inside the cabin? "I've got to light up." "No, you can't." Well, we know what might have happened there.

And I ask a question here. What kind of risks might we be encouraging by having the crew fatigue, sitting out there 8 or 9 hours hours. It's not well thought out. And we have overcrowding in the skies that's going to get worse with the advent of the very light jets that are coming; 5,000 are predicted to be in the air in the next 10 years. And I see it regularly, when I try to get an airplane to the New York/New Jersey region, get in the plane, the pilot reminds us that it's 36 minutes of flying time, and then tells us that we have an hour and a half wait before we start the flying time going. And so, things are really terribly mixed up. And the inhumane treatment of passengers, and including pets that are in the airplane, also unable to control what—their activities, and what kind of a intolerable commission—condition exists in these airplanes.

So, I think the airline industry has to get together and think through a policy that says relief must be supplied. What happens if the fuel gets low? They don't just take off when—with a lesser amount of fuel than they need. And why shouldn't the passengers be treated the same way? I mean, at some point, they're out of condition, out of acceptable humane condition, that there isn't some relief mechanism, whether it's sending buses out there or something else, you're not going to have people load and unload with their baggage problems, security problems attached.

I'll close with one thought and one quick story. My son came in. He lives in Colorado, and tried to land in New York—it was a few years ago—in the snow, and they sent—diverted them up to Albany, New York. And they were on the plane a few hours. It was late at night.

And my son got the idea to call Dominos Pizza, and the truck was allowed out on the airport, and everybody had a piece of pizza, which gave them some sense of relief. But I close, Mr. Chairman, by saying that if I've ever seen an argument for high-speed rail in this country of ours, it's now.

[Laughter.]

Senator LAUTENBERG. It is now. The highways are jammed. The airports are jammed. People sitting on the floor—very often, you trip over people. They say, "Don't leave your baggage around." Don't leave your people around, because you trip on them as you walk through.

So, we've got to think very broadly about this, Mr. Chairman and figure out what alternatives there can be to these terrible delays and discomforts.

The CHAIRMAN. Thank you very much.

And now we'll hear from the experts. We have two panels. The first panel, Mr. Michael Reynolds, Deputy Assistant Secretary, United States Department of Transportation, and the Honorable Calvin L. Scovel III, Inspector General, U.S. Department of Transportation, Office of Inspector General.

May I first recognize Mr. Reynolds?

STATEMENT OF MICHAEL W. REYNOLDS, DEPUTY ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. REYNOLDS. Mr. Chairman, Mr. Vice Chairman, members of the Committee, thank you for inviting me to this hearing. I appreciate the opportunity to testify today on behalf of the Department of Transportation.

With your permission, I would like to summarize my written statement, which I ask be made part of the record.

The CHAIRMAN. Without objection, so ordered.

Mr. REYNOLDS. Since deregulation of the airline industry nearly 30 years ago, the Department has sought to balance the public interest in protecting consumers from unreasonable practices with our statutory mandate to allow market forces to operate to the maximum extent possible in order to determine what services are best provided by airlines. We continue to believe that this approach is the proper one.

The cornerstone provision of DOT's Consumer Protection Program is a section of the U.S. Code that broadly prohibits unfair and deceptive practices and unfair methods of competition in air transportation. The Department's Office of the General Counsel acts as the prosecuting office for aviation consumer enforcement cases under that statute, which is enforceable in its own right, and, more importantly, serves as the basis for DOT policies and rulemakings.

That office also handles all consumer complaints and inquiries, and publishes the Department's monthly *Air Travel Consumer Report*, which summarizes airline data on flight delays, mishandled baggage, and denied boardings, and also lists, by airline, the number of complaints registered with DOT. It's important to note that between 2000 and 2006, complaints filed with the Department went down by nearly two-thirds; however complaint numbers are starting to rise this year.

Let me now touch upon the incidents of this past winter, involving airline passengers being trapped for many hours on aircraft on the ground. The most highly publicized events involved American Airlines, in late December of last year, and JetBlue Airways, in February, both of which were related to adverse weather. Although these two carriers received extensive media attention, virtually all carriers have had problems related to customer service, including, on occasion, flights that experience long tarmac delays.

Secretary Peters and the Department were troubled by incidents like these, particularly to the extent that food, water, and other basic needs were not being met by the airlines. That is why we are pleased to see that the airlines involved in these specific incidents appear to be taking some corrective actions.

In response to its December incident, American Airlines reportedly instituted new guidelines which implemented—which included limiting tarmac delays to no more than 4 hours. JetBlue very publicly accepted responsibility for its shortcomings and took a number of steps, including adopting what it terms a Customer Bill of Rights.

Although extended tarmac delays are statistically rare, as I'll discuss in a moment, airlines must have adequate plans in place to deal with these types of situations as they arise. Clearly, stranding hundreds of passengers aboard aircraft sitting on tarmacs for as many as 9 hours is not acceptable. And incidents like these raise serious concerns about planning for such events. Passenger carriers should do everything possible to ensure situations like this do not occur again.

The Department strongly prefers that the airlines address their customer service issues, rather than the Federal Government, but sometimes outside action may be necessary. That is why Secretary Peters formally asked the Department's Inspector General to conduct an investigation into these incidents. The Secretary further requested that the IG examine how the major air carriers are doing on the commitment they made nearly 9 years ago to ensure that basic needs of passengers are met during long ground delays. After the IG's review, we will consider what, if any, further action is appropriate.

It is important to keep the issue of tarmac delays in context. Airline networks are extremely complex operations that balance many

operational, mechanical, safety, regulatory, and other constraints. Any new requirement has the potential to add to the complexity and costs of these operations.

Also, between 2000 and 2006, complaints to DOT about tarmac delays have decreased significantly, both in absolute number and as a percentage of total complaints.

With regard to recent tarmac delays, DOT's statistics show that in 2006 less than two-hundredths of 1 percent of all flights by the largest 20 airlines were delayed by more than 3 hours in taking off after leaving the gate. Further, your chances, last year, of being on the tarmac for more than 5 hours after leaving the gate were about 1 in 200,000. Of course, we recognize that statistics mean nothing to the passengers who are victims of lengthy tarmac delays, and, therefore, statistics cannot be the sole factors to consider.

We empathize with passengers delayed on airplanes for long periods of time. We also empathize with passengers who want to get to their destinations and, despite weather-induced delays, would like airlines to make every effort to get them there as quickly as possible. I can assure the Committee that the Department will review the IG's report carefully, and, if necessary, take appropriate actions to ensure that airlines are adequately protecting consumers in relation to the possibility of extended on-ground delays.

Thank you, again, for the opportunity to testify, and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Reynolds follows:]

PREPARED STATEMENT OF MICHAEL W. REYNOLDS, DEPUTY ASSISTANT SECRETARY
FOR AVIATION AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, thank you for inviting me to this hearing. I appreciate the opportunity to testify today on behalf of the Department of Transportation.

I want to emphasize to the Committee at the outset of my statement that the issue prompting this hearing today, which involves the treatment of consumers by airlines during extended on-ground flight delays, commonly referred to as tarmac delays, is being taken seriously by the Department, as evidenced by our prompt action following the recent incidents, which I will discuss shortly. Before I discuss that action, however, I would like to give you a broad overview of our authority to regulate in matters involving airline consumer protection, including tarmac delays, and our continuing efforts to ensure that passenger carriers meet their obligations to consumers.

Since deregulation of the airline industry nearly 30 years ago, the Department—as well as its predecessor, the Civil Aeronautics Board—has sought to balance the public interest in protecting consumers from unreasonable practices with our statutory mandate to permit market forces to operate to the maximum extent possible in order to determine what services are best provided the public by airlines. When action has been required, we have tried, wherever possible, to implement measures to enhance the functioning of the marketplace, such as publishing carrier performance data, or requiring the airlines themselves to disclose data to consumers that may be of use in making their choices of which carriers to use. We continue to believe this approach to be the proper one.

The cornerstone provision for DOT's consumer protection program covering all economic regulatory matters, as opposed to those involving safety, is section 41712 of Title 49 of the U.S. Code, which broadly prohibits unfair and deceptive practices and unfair methods of competition in air transportation. The Secretary's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) acts as the prosecuting office for aviation consumer enforcement cases, including those involving unfair and deceptive practices. That office may act on its own initiative, and it also reviews formal third-party complaints alleging violations of the statute or the Department's consumer protection rules and either dismisses them or pursues enforcement action. It also has the authority to enter into settle-

ments relating to those cases. Section 41712 is enforceable in its own right, but violations can be difficult to demonstrate. Even if a prosecution is ultimately successful, such cases are resource intensive, time consuming, and of limited precedential value because each is highly dependent on its own set of facts. That section is more important as the basis for DOT rulemaking and policymaking, where the public interest dictates, to define the extent of its statutory reach. For example, section 41712 provides the statutory basis for our airline full fare advertising and oversales compensation rules.

The Aviation Consumer Protection Division, within the Enforcement Office, handles all consumer complaints and inquiries involving economic regulatory matters and works with airlines and other companies to resolve informal consumer complaints relating to air transportation. Complaints filed with that division are often helpful to us in reviewing specific problem areas or industry trends that may need to be addressed through administrative action. That division also investigates apparent violations of consumer protection requirements, refers matters to the Enforcement Office where appropriate, and performs consumer protection rulemaking functions. In addition, the Aviation Consumer Protection Division has significant public information, education, and outreach programs, including publications that provide general air travel consumer information, such as the Department's monthly *Air Travel Consumer Report*. That report summarizes data filed with DOT by carriers on flight delays, mishandled baggage, and denied boardings, and also lists by carrier the number of complaints registered in a variety of areas, including baggage, refunds, and flight irregularities. Complaints filed with the Department over the past several years have trended downward from a high of about 23,000 in calendar year 2000, with about 8,300 being filed with us last year. However, complaint numbers are starting to increase this year.

Let me now touch upon the incidents of this past winter involving airline passengers being trapped for many hours on aircraft on the ground. The most highly-publicized events included serious service disruptions and lengthy tarmac delays experienced by American Airlines in late December of last year after severe weather hit the Southwest. Also, more recently, JetBlue Airways experienced severe flight irregularities and lengthy on-ground delays on Valentine's Day and the days that followed during a period of adverse weather in the Northeast. Although American and JetBlue received extensive media attention, virtually all carriers have had problems related to customer service, including, on rare occasion, flights that experience long tarmac delays.

Secretary Peters and the Department were troubled by incidents like these, particularly to the extent that food, water, and other basic needs were not being met by the airlines. That is why we were pleased to see that the airlines involved in these specific incidents appeared to be taking substantial corrective actions. In response to its December incident, American Airlines reportedly instituted new guidelines, which included limiting tarmac delays to no more than 4 hours. JetBlue very publicly accepted responsibility for its shortcomings and took a number of steps to address its customers' concerns. Significantly, it adopted what it termed a "Customer Bill of Rights," by which it promises to (1) provide passengers on lengthy on-board delays with food, water, and medical care, if necessary; (2) compensate passengers for extended tarmac delays; and (3) set a time limit of 5 hours on the maximum duration of any tarmac delay. This policy has been widely disseminated and made available to the public on the carrier's website. Importantly, JetBlue incorporated its bill of rights into its contract of carriage, providing passengers a legally binding avenue of redress if the carrier fails to follow through on its promises.

Although extended tarmac delays are statistically rare (as I'll discuss in a moment), airlines must have adequate plans in place to deal with these situations as they arise. Clearly, stranding hundreds of passengers aboard aircraft sitting on tarmacs for as many as 9 hours is not acceptable, and incidents like these raise serious concerns about planning for such events. Passenger carriers should do everything possible to ensure that situations like these do not occur again.

The Department strongly prefers that the airlines address customer service issues rather than the Federal Government, but sometimes outside action may be necessary. That is why Secretary Peters formally asked the Department's Inspector General (IG) to conduct an investigation into these incidents and further requested that the IG examine how all the major airlines are doing on the commitment they made nearly 8 years ago to ensure that the basic needs of passengers are met during long ground delays. After the IG's review, we will consider what, if any, further action is appropriate. This review will also look at whether any "best practices" exist that can afford an opportunity for all carriers to learn from these experiences and ensure they are not repeated.

It is important to keep the issue of tarmac delays in context. Our Aviation Consumer Protection Division records complaints concerning the number of unreasonable tarmac delays, which have ranged from 753 during the year 2000 to just over 100 last year. Tarmac delay complaints have not only generally decreased in absolute numbers over the years, but importantly, the number of such complaints as a percentage of total complaints has decreased from 3.2 percent in the year 2000 to only 1.3 percent last year.

Separately, the Bureau of Transportation Statistics collects data regarding taxi-out times for the 20 largest airlines. With regard to recent tarmac delays, our statistics show that in 2006, out of a total of more than 7.14 million flights, just under 1,300 (1,295) were delayed more than 3 hours in taking off after leaving the gate. Excluding flights that were diverted or ultimately canceled (our reporting requirements do not capture data on delays associated with such flights), this means that less than two-hundredths of 1 percent (0.018 percent) of all these flights experienced tarmac delays in excess of 3 hours after leaving the gate. Last year, your chances of being on the tarmac for more than 5 hours after leaving the gate were about 1 in 200,000.

Of course, we recognize that statistics mean nothing to the passengers who are themselves the victims of unreasonable tarmac delays and therefore statistics cannot be the sole factor to consider in determining what, if anything, we should do to address tarmac delays. Indeed, the Department is of the firm belief that each carrier should, at a minimum, make clear what passengers can expect with regard to extended ground delays and, in particular, should have in place comprehensive plans to ensure that efforts will be made to get passengers off an aircraft when ground delays, involving either departing or arriving flights, are expected to extend beyond a reasonable period of time.

What the Secretary has asked the Inspector General to do is a challenging task. I assure the Committee that the Department will review the report carefully and, if necessary, take appropriate actions to ensure that airlines are adequately protecting consumers in relation to the possibility of extended on-ground delays.

As policymakers consider these incidents, it is important to understand that airline networks in the 21st century are extremely complex operations involving myriad operational, mechanical, safety, regulatory, and other constraints. Unlike many other service industries and despite technological advances, air transportation is still a complicated process that requires close coordination among many different organizations, including various divisions of an airline, an airport, the FAA's Air Traffic Organization, and many ground service and maintenance providers. As we have seen, when complex airline operating systems are interrupted by weather or other irregularities, a breakdown in the business or operational practices anywhere in the system can have significant ripple effects from which it becomes increasingly difficult to recover.

Given this complexity, we believe the facts must be better understood before determining what, if any, action by the government is warranted. We empathize with passengers delayed on airplanes for long periods of time. We also empathize with passengers who want to get to their destinations and—despite weather-induced delays—would like airlines to make every effort to get them there as quickly as possible. We first need to understand better the root causes of extended tarmac delays and determine whether the causes are specific to an individual airline's business and operational procedures or more systemic in scope. That is why we asked the IG to investigate with a view toward not only understanding the issues, but also exploring industry best practices that may address them.

A discussion of what today's aviation passenger faces in our current system would not be complete without a discussion of our plans for transforming the system to the Next Generation Air Transportation System (NextGen). I know this Committee held hearings last month on the work of the Joint Planning and Development Office (JPDO), but it is worth a brief mention here because unless we lay the foundation today for NextGen, airline passengers will encounter untold delays and service disruptions in the future. If an overloaded system begins to grind to a halt, it will matter little how well airlines handle customer service.

We already see the impact of the effects of increased demand for service on the air transportation system. Last year stands as one of the worst on record for delays, with about one in four flights of the 20 largest carriers arriving late. This year is looking no better. In February, only 67.3 percent of the domestic flights by those carriers arrived on time, making it the 5th worst month for on-time performance since 1995. Looking well down the road, we predict delays will increase 62 percent by 2014 without NextGen. There is simply no way we can overcome congestion of this magnitude without transforming the air traffic management system. Other issues, ranging from environmental concerns to the complexities of homeland secu-

city, are placing additional stress on the system. It's a sobering picture. Without NextGen, some parts of the system will "freeze" first. Then other areas will follow. The system will reach its absolute breaking point, and our customers, especially the passengers, will be the ones who suffer.

The people whom we serve—our customers—don't deserve to be mired in congestion. Investing now in NextGen systems will avoid that outcome. We must replace our outdated air traffic control architecture with a 21st century satellite-based navigation system. Such a system will safely handle dramatic increases in the number and type of aircraft using our skies, without being overwhelmed by congestion. The JPDO released the *NextGen Concept of Operations* for public comment on February 28. It is now available on the JPDO website for review and comment by aviation stakeholders. The *NextGen Enterprise Architecture* and the *Integrated Work Plan* should be released within the next few months. These documents provide us with that picture of where we want to go and the plans for how to achieve it.

As you know, the Administration believes that the current funding system is out of step with critical future needs. Without a rational funding mechanism that is tied to costs and future infrastructure development needs, the best laid plans for the NextGen system could be wasted, and long delays, on the ground and in the air, will only get worse. In other words, passenger well-being in the future depends on what the Federal Government does now as much as what the airlines do. I know you've had hearings on the specifics of our funding proposal, so I won't repeat them here. I would, however, like to emphasize the urgent need for a more equitable system of fees that more accurately reflects the true cost of services that various types of users actually consume.

Thank you again for this opportunity to testify. I would be happy to answer any questions you may have.

The CHAIRMAN. I thank you very much.
And may I now recognize Mr. Scovel?

**STATEMENT OF HON. CALVIN L. SCOVEL III, INSPECTOR
GENERAL, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. SCOVEL. Mr. Chairman, Mr. Vice Chairman, and members of the Committee, I appreciate the opportunity to testify this afternoon. This hearing is both timely and important, given the recent events this past winter involving extended ground delays with passengers stranded onboard aircraft for extended periods, some for 9 hours or longer.

Secretary Peters has serious concerns about this issue, and has asked my office to review the airlines' customer service commitments and policies for dealing with extended ground delays and the airlines' contingency planning for such events.

As this Committee is aware, airline customer service took center stage in January 1999, when a similar situation occurred, with hundreds of passengers trapped onboard planes on snowbound runways in Detroit. Following congressional hearings at that time, member airlines of the Air Transport Association, ATA, agreed to execute a voluntary airline customer service commitment to demonstrate their dedication to improving air travel.

In February 2001, we reported that the ATA member airlines were making progress toward meeting the commitment, which has benefited air travelers in a number of important areas. However, the commitment did not directly address the underlying cause of deep-seated customer dissatisfaction: flight delays, and cancellations. And this is still the case.

The debate today is over the best way to ensure improved airline customer service, whether it's voluntarily implemented by airlines, legislated by Congress, further regulated by the Department, or

some combination thereof. This is clearly a policy issue for Congress to decide.

Today, I would like to discuss three important points regarding airline customer service, as we see them, based on the results of our previous airline customer service reviews and our ongoing work.

First, the airlines must refocus efforts to improve customer service. In November 2006, we reported that ATA member airlines' customer service plans were still in place to carry out the provisions of their commitment, including meeting passengers' essential needs during long onboard delays. However, we found several areas where the airlines needed to refocus efforts to improve customer service.

The airlines needed to resume efforts to self-audit their customer service plans. A quality assurance and performance measurement system, combined with self-audits, are necessary to ensure the success of both the commitment and the customer service plans. In our 2006 review, however, we found that just five of the ATA airlines had quality assurance systems and performed self-audits.

Next, the airlines must also emphasize to their customer service employees the importance of providing timely and accurate flight information to passengers.

Further, the airlines must disclose chronically delayed flights to customers. We recommended, in our 2001 report, that the airlines disclose to their passengers, at the time of booking and without request, the on-time performance for those flights that are consistently delayed. To date, none of the airlines have adopted this recommendation.

Second, the Department should take a more active role in airline customer service issues. DOT is responsible for oversight and enforcement of air travelers consumer protection requirements. However, when DOT discovered violations and assessed penalties, it almost always forgave the penalty if the airline agreed to mitigate the condition for which the penalty was assessed. DOT's follow-up to ensure compliance was limited, and, in some cases, there was no follow-up monitoring at all. Also, instead of onsite compliance reviews, the Department has primarily relied on air carriers' self-certifications.

Third, the airlines must overcome challenges in mitigating extraordinary flight disruptions. In 2006, approximately 10 percent of all commercial flights were delayed due to poor weather conditions. As I mentioned earlier, meeting passengers' essential needs during long onboard delays is a serious concern of Secretary Peters. She asked my office to examine the airlines' customer service plans for dealing with these events, especially the recent events at American and JetBlue, and provide recommendations as to what can be done to prevent a recurrence of such events.

We are in the early stages of this review, and plan to brief the Secretary in June, and issue our report and recommendations shortly thereafter. However our work, thus far, has shown that there are a number of actions that airlines, airports, the Department, and FAA can undertake immediately, without congressional action, to improve airline customer service.

One, airlines should implement quality assurance and performance measurement systems, and conduct internal audits of their compliance with the commitment provisions.

Two, the Department should revisit its current position on chronic delays and cancellations, and take enforcement actions against air carriers that consistently advertise flight schedules that are unrealistic, regardless of the reason.

Three, the airlines, airports, and FAA should establish a task force to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and airports to share facilities and make gates available in an emergency.

Finally, the Department, in collaboration with FAA, the airlines and airports, should review incidents involving long onboard ground delays and their causes, identify trends and patterns in such events, and implement workable solutions for mitigating extraordinarily flight disruptions.

This concludes my statement. I'd be glad to answer any questions you or other members of the Committee may have.

[The prepared statement of Mr. Scovel follows:]

PREPARED STATEMENT OF HON. CALVIN L. SCOVEL III, INSPECTOR GENERAL,
U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee:

I appreciate the opportunity to be here today to discuss airline customer service. This hearing is both timely and important given the recent events that occurred this past winter involving extended ground delays. In some cases, passengers were stranded aboard aircraft at the gate or on the airport tarmac for 9 hours or more due to severe weather conditions.

It is also important to recognize that Secretary Peters has serious concerns about the airlines' treatment of passengers during extended ground delays; as such, she requested that we examine the airlines' customer service plans, contracts of carriage,¹ and internal policies dealing with long, onboard delays and the specific incidents involving American Airlines and JetBlue Airways when passengers were stranded onboard aircraft for extended periods of time. She also requested that we provide recommendations on what actions should be taken to prevent a recurrence of such events.

Currently, the debate is over the best way to ensure improved airline customer service: either through voluntary implementation by the airlines, legislation, additional regulations, or some combination of these. This is clearly a policy issue for Congress to decide. Our testimony today is based on the results of our previous airline customer service reviews as well as our ongoing work. I would like to discuss three key points dealing with actions that would help to improve customer service:

The airlines must refocus their efforts to improve customer service. In November 2006, we reported² that Air Transport Association (ATA)³ airlines' customer service plans were still in place to carry out the provisions of the Airline Customer Service Commitment that the airlines promised to execute. These provisions include meeting passengers' essential needs during long, onboard delays. However, we found that the airlines must refocus their efforts on airline customer service by resuming efforts to self audit their customer service plans, emphasizing to their customer service employees the importance of providing timely and adequate flight information, disclosing to customers chronically delayed flights, and focusing on the training for personnel who assist passengers with disabilities.

¹ A contract of carriage is the document air carriers use to specify legal obligations to passengers. Each air carrier must provide a copy of its contract of carriage free of charge upon request. The contract of carriage is also available for public inspection at airports and ticket offices.

² OIG Report Number AV-2007-012, "Follow-Up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment," November 21, 2006. OIG reports and testimonies can be found on our website: www.oig.dot.gov.

³ The Air Transport Association is the trade association for America's leading air carriers. Its members transport over 90 percent of all the passenger and cargo traffic in the United States.

The Department should take a more active role in airline customer service issues. Oversight and enforcement of air traveler consumer protection rules are the responsibility of the Department's Office of General Counsel. These rules encompass many areas, including unfair and deceptive practices and unfair methods of competition by air carriers and travel agents, such as deceptive advertising. We found that while the Office has made efforts to enforce civil rights violations, it needs to improve its oversight of consumer protection laws, including its efforts to monitor compliance with the terms and conditions of enforcement actions. In recent years, the Office has not conducted onsite compliance reviews, relying instead on self-certifications and company-prepared reports submitted by the air carriers without supporting documentation.

The airlines must overcome challenges in mitigating extraordinary flight disruptions. This past winter's severe weather events underscored the importance of improving customer service for passengers who are stranded onboard aircraft for extended periods of time. According to the Department's Bureau of Transportation Statistics, approximately 722,600 flights were delayed in 2006 *due to poor weather conditions* (10 percent of all commercial flights). Meeting passengers' essential needs during long, onboard delays is a serious concern of Secretary Peters and the Department. Therefore, she asked our office to examine the American Airlines and JetBlue Airways events of December 29, 2006, and February 14, 2007, respectively, and provide recommendations as to what, if anything, the airlines, airports, or the Government—including the Department—might do to prevent a recurrence of such events.

Before I discuss these points in detail, I would like to briefly describe why airline customer service is a "front-burner" issue and highlight a few statistics on the development of the current aviation environment.

As this Committee is aware, airline customer service took center stage in January 1999, when hundreds of passengers remained in planes on snowbound Detroit runways for up to 8 and a half hours. After those events, both the House and Senate considered whether to enact a "passenger bill of rights."

Following congressional hearings on these service issues, ATA member airlines agreed to execute a voluntary Airline Customer Service Commitment⁴ to demonstrate their dedication to improving air travel (see figure 1), with provisions such as meeting passengers' essential needs during long, on-board delays.

Figure 1. Provisions of the Airline Customer Service Commitment

- Offer the lowest fare available.
- Notify customers of known delays, cancellations, and diversions.
- Deliver baggage on time.
- Support an increase in the baggage liability limit.
- Allow reservations to be held or canceled.
- Provide prompt ticket refunds.
- Properly accommodate disabled and special-needs passengers.
- Meet customers' essential needs during long, on-aircraft delays.
- Handle "bumped" passengers with fairness and consistency.
- Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration.
- Ensure good customer service from code share partners.
- Be more responsive to customer complaints.

Source: Airline Customer Service Commitment, June 1999.

However, aviation delays and cancellations continued to worsen, eventually reaching their peak during the summer of 2000. In 2000, more than 1 in 4 flights (26 percent) were delayed, with an average arrival delay of 51 minutes.

Congress then directed our office to evaluate the effectiveness of the Commitment and the customer service plans of individual ATA airlines.

We issued our final report⁵ in February 2001. Overall, we found that the ATA airlines were making progress toward meeting the Commitment, which has benefited air travelers in a number of important areas. We found that the airlines were

⁴ ATA signed the Commitment on behalf of the then 14 ATA member airlines (Alaska Airlines, Aloha Airlines, American Airlines, American Trans Air, America West Airlines, Continental Airlines, Delta Air Lines, Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Airlines, and US Airways).

⁵ OIG Report Number AV-2001-020, "Final Report on Airline Customer Service Commitment," February 12, 2001.

making the greatest progress in areas that are not directly related to a flight delay or cancellation, such as offering the lowest fare available, holding reservations, and responding in a timely manner to complaints.

Although the ATA airlines made progress toward meeting the Commitment, we found that the Commitment did not directly address the underlying cause of deep-seated customer dissatisfaction—flight delays and cancellations. This is still the case today.

Since our 2001 report, the air carrier industry has faced a series of major challenges, including a weakened economy; the terrorist attacks of September 11, 2001; the Severe Acute Respiratory Syndrome epidemic; the war in Iraq; and soaring fuel prices. As we reported in November 2006, the network air carriers generated about \$58 billion in net losses from 2001 through 2005. They have also made unprecedented changes to their operations to regain profitability. Eight commercial air carriers have filed bankruptcy, two major air carriers have merged, and one has ceased operations. While four of the eight air carriers have emerged from bankruptcy, fuel prices continue to climb; this makes cost control a key factor in not only sustained profitability but also in overall survival of an airline.

We revisited airline customer service issues to a limited extent following the December 2004 holiday travel period, when weather and other factors led to severe service disruptions in some parts of the country. While our review⁶ focused on the inconveniences experienced by Comair and US Airways passengers, we found that nearly half of all flights, system-wide, during the 7-day travel period were either delayed or canceled, affecting hundreds of thousands of passengers.

Flight delays and cancellations continue as a major source of customer dissatisfaction. A review of vital statistics shows the environment that air travelers faced in 2006 compared to peak year 2000.

Traffic and Capacity

- The number of scheduled flights (capacity) declined from 8.1 million in 2000 to 7.6 million in 2006, a drop of 6.4 percent. Scheduled seats declined by 9.5 percent between 2000 and 2006, from 921 million to 834 million.
- Even as the number of flights and scheduled seats declined, passenger enplanements were up nearly 7 percent, from 699 million passengers in 2000 to 745 million passengers in 2006.
- Reduced capacity and increased demand led to fuller flights. For 2006, load factors averaged nearly 80 percent for 10 of the largest ATA airlines, compared to average load factors of just over 72 percent for 2000.
- Reduced capacity and higher load factors can also result in increased passenger inconvenience and dissatisfaction with customer service. With more seats filled, air carriers have fewer options to accommodate passengers from canceled flights.

Flight Delays

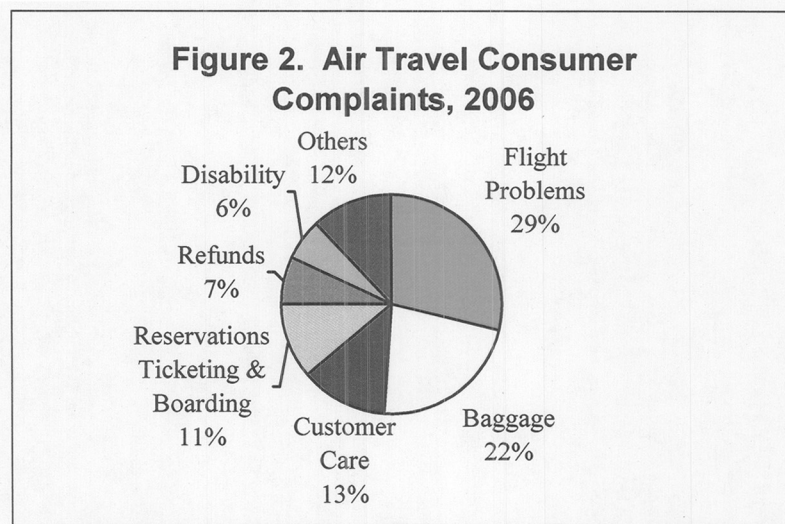
- The number of delayed flights has declined from 2.09 million in 2000 to 2.02 million flights in 2006, a decrease of 3.5 percent.
- The percentage of delayed flights also declined from approximately 26 percent in 2000 to 25 percent in 2006.
- Nevertheless, the average flight delay increased from 51 minutes in 2000 to 53 minutes in 2006.
- While flight delays have declined nationwide since 2000, some individual airports experienced significant reductions in service and a subsequent reduction in delays. However, traffic and delays continued to increase at other airports. For example, between 2000 and 2006, George Bush Intercontinental/Houston Airport experienced a 27 percent increase in scheduled flights and a 55 percent increase in delays. This increase is important to note because Houston added a new runway in 2003 at a cost of \$267 million that was supposed to alleviate delays. In comparison, Newark International Airport had a 3 percent reduction in scheduled flights but experienced a 34 percent increase in flight delays during this same time period.

Consumer complaints are rising. While the 2006 Department of Transportation (DOT) *Air Travel Consumer Report* disclosed that complaints involving U.S. airlines for 2006 had declined by 6.6 percent (6,900 to 6,448) compared to complaints in

⁶ OIG Report Number SC-2005-051, "Review of December 2004 Holiday Air Travel Disruptions," February 28, 2005.

2005, February 2007 complaints increased by 57 percent (423 to 666) over complaints in February 2006, with complaints relating to delays, cancellations, and missed connections nearly doubling (127 to 247) for the same period.

Over the last several years, DOT ranks flight problems (*i.e.*, delays, cancellations, and missed connections) as the number one air traveler complaint, with baggage complaints and customer care⁷ ranked number two and number three, respectively. As shown in figure 2, flight problems accounted for more than one-quarter of all complaints the Department received in 2006.



Source: DOT's Air Travel Consumer Reports for 2006

Historically, most chronically delayed and canceled flights occur during the busy summer travel season—which will soon be upon us. The extent to which delays and cancellations will impact passengers in 2007 depends on several key factors, including weather conditions, the impact of the economy on air traffic demand, and how existing capacity is managed at already congested airports.

I would now like to turn to my three points on airline customer service.

Airlines Must Refocus Their Efforts To Improve Customer Service. In June 2005, the Chairman of the House Subcommittee on Aviation requested that we follow up on the performance of U.S. air carriers in implementing provisions of the Commitment since the issuance of our 2001 report.

Unlike our prior work, which reviewed each provision, this review focused on selected Commitment provisions.⁸ We reviewed implementation of the selected Commitment provisions by the 13 current ATA member airlines; this included JetBlue Airways, which became an ATA member in 2001. JetBlue has not adopted the June 1999 Commitment and does not consider itself bound by its provisions. We also reviewed implementation of the selected provisions by two non-ATA airlines that are not signatories to the Commitment—AirTran Airways and Frontier Airlines.

In November 2006, we reported that the ATA airlines' customer service plans were still in place to carry out the provisions of the Commitment and that the Commitment provisions were still incorporated in their contracts of carriage, as we recommended in our 2001 review. This is important because unlike DOT regulations, which are enforced by the Department and may result in administrative or civil penalties against an air carrier, contracts of carriage are binding contracts enforceable by the customer against the air carrier.

⁷ Complaints such as poor employee attitude, refusal to provide assistance, unsatisfactory seating, and unsatisfactory food service are categorized as customer care complaints.

⁸ Our 2006 review focused on notifying passengers of delays and cancellations, accommodating passengers with disabilities and special needs, improving frequent flyer program issues, and overbooking and denied boardings. We did not include the Commitment provision regarding on-time checked baggage delivery, which was subject to a hearing before the House Subcommittee on Aviation in May 2006.

However, we found that the airlines must refocus their efforts on airline customer service by taking the following actions.

Resuming Efforts To Self Audit Their Customer Service Plans: In our 2001 report, we recommended, and the ATA airlines agreed, that the airlines establish quality assurance and performance measurement systems and conduct internal audits to measure compliance with the Commitment provisions and customer service plans.

In June 2001 (about 5 months later), we confirmed that 12 of the 14 ATA airlines that were signatories to the Commitment had established and implemented their quality assurance and performance measurement systems. In our 2006 review, however, we found that the quality assurance and performance measurement systems were being implemented at just five of the ATA airlines.⁹ The other ATA airlines had either discontinued their systems after September 11, 2001, or combined them with operations or financial performance reviews where the Commitment provisions were overshadowed by operational or financial issues. We also found that the two non-ATA airlines we reviewed did not have comprehensive quality assurance and performance measurement systems or conduct internal audits to measure compliance with their customer service plans.

A quality assurance and performance measurement system is necessary to ensure the success of the Commitment and customer service plans. Therefore, the success of the customer service plans depends upon each airline having a tracking system for compliance with each provision along with an implementation plan for the Commitment. These systems and audit procedures will also help DOT to more efficiently review the airlines' compliance with the Commitment.

Emphasizing to Their Customer Service Employees the Importance of Providing Timely and Adequate Flight Information: The ATA airlines committed to notify customers who are either at the airport or onboard an affected aircraft of the best available information regarding delays, cancellations, and diversions in a timely manner.

All of the airlines included in our 2006 review made up-to-date information available about their flights' status via their Internet sites or toll-free telephone reservation systems. However, we still found that the information provided in boarding areas about delays and cancellations was not timely or adequate during our tests. In 42 percent of our observations, airline gate agents did not make timely announcements (defined as approximately every 20 minutes) about the status of delays, and the information they provided was not adequate about 45 percent of the time.

This is one area where the airlines' self-audits would be effective in monitoring compliance with the Commitment provision and their own internal policies.

Disclosing Chronically Delayed Flights to Customers: On-time flight performance data should also be made readily available to passengers at the time of booking. We recommended in our 2001 report that the airlines disclose to passengers at the time of booking—without being asked—the prior month's on-time performance for those flights that have been consistently delayed (*i.e.*, 30 minutes or greater) or canceled 40 percent or more of the time. We have recommended this several times, but none of the airlines to date have chosen to adopt it.

Currently, the airlines are required to disclose on-time performance only upon request from customers. However, the information that the agents provide about on-time performance through the airlines' telephone reservation systems is not always accurate or adequate. In 41 percent of our 160 calls to the airlines' telephone reservation systems, we were told that the information was not available or the agents either guessed what they thought the on-time performance was or gave the data for only the previous day.

The on-time performance for consistently delayed or canceled flights is readily available to the airlines. Continuing to operate chronically delayed flights could potentially constitute a deceptive business practice. Not disclosing such chronic delays on a flight could be viewed as contributing to such a deceptive practice. Therefore, we continue to believe—as we recommended in 2001—that on-time performance should be disclosed at the time of booking for those flights that have been consistently delayed and should not require a customer request.

Focusing on the Training for Personnel Who Assist Passengers With Disabilities. The needs and perspectives of passengers with disabilities are of paramount importance in providing satisfactory service. This is especially true during extended flight delays whether the passengers are onboard aircraft or in the airlines' gate area.

⁹At the time of our 2006 review, quality assurance and performance measurement systems were being implemented at Alaska Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, and United Airlines.

The ATA airlines committed to disclose their policies and procedures for assisting special needs passengers, such as unaccompanied minors, and for accommodating passengers with disabilities in an appropriate manner.

In our 2001 review, the airlines performed well with respect to this provision. However, in our 2006 review, we found that the majority of airlines (11 of 15) and their contractor personnel who interact with passengers with disabilities were not complying with the Federal training requirements or with their own policies. In over 15 percent of the 1,073 employee training records we reviewed, airline employees were either not trained, not promptly trained, did not have records to support completion of training, or were not current with annual refresher training.

The airlines need to refocus their attention in this area and ensure that employees who assist passengers with disabilities are properly trained.

The Department Should Take a More Active Role in Airline Customer Service Issues. Oversight and enforcement of air traveler consumer protection rules are the responsibility of the Department's Office of General Counsel. These rules encompass many areas, including unfair and deceptive practices and unfair methods of competition by air carriers and travel agents, such as deceptive advertising.

In our 2001 customer service report, we recommended that the Department be given additional resources to investigate and enforce cases under its statutory authority, and Congress did so. As part of our 2006 review, we examined how the Department has used the additional resources Congress appropriated to oversee and enforce air travel consumer protection requirements.

We found that DOT was using its additional resources to oversee and enforce air travel consumer protection requirements with a focus on investigations and enforcement of civil rights issues, including complaints from passengers with disabilities. But, when DOT discovered violations and assessed penalties, it almost always forgave the penalty if the air carrier agreed to mitigate the conditions for which the penalty was assessed. DOT's follow-up monitoring of compliance with these conditions was limited, and in some cases there was no follow-up monitoring at all. In recent years, DOT has not conducted onsite compliance reviews, relying instead on air carriers' self-certifications and company-prepared reports submitted without supporting documentation.

We also found that DOT's increased responsibilities—especially as they relate to civil rights issues—had diverted resources away from its other consumer protection activities, such as regular on-site consumer protection and related compliance and enforcement visits to airlines.

Given the results of our 2006 review and the extended ground delays that stranded passengers onboard aircraft this past winter, DOT should take a more active role in overseeing airline customer service.

The Airlines Must Overcome Challenges in Mitigating Extraordinary Flight Disruptions. The airlines continue to face challenges in mitigating extraordinary flight disruptions, including long, on-board delays during extreme weather. According to DOT's Bureau of Transportation Statistics, approximately 722,600 flights were delayed in 2006 *due to poor weather conditions* (10 percent of all commercial flights). For that same year, over 73,000 flights experienced taxi-out and taxi-in times of 1 hour or more. The airlines, the Federal Aviation Administration (FAA), and the Department cannot prevent significant weather events. What they can do, however, is work together to plan for such events and minimize the impact on passengers.

This past winter's severe weather events underscored the importance of improving customer service for passengers who are stranded onboard aircraft for extended periods of time.

- On December 20, 2006, severe blizzards closed Denver's airport, causing several airplanes to divert to other airports. United Airlines diverted two flights to Cheyenne, Wyoming. The following morning, United's flight crew and attendants boarded the aircraft and departed, leaving all 110 passengers behind to fend for themselves.
- On December 29, 2006, the Dallas-Fort Worth area experienced unseasonably severe weather that generated massive thunder, lightning storms, and a tornado warning; this caused the airport to shut down operations several times over the course of an 8 hour period. American Airlines diverted over 100 flights and many passengers were stranded onboard aircraft on the airport tarmac for 6 hours or more.
- On February 14, 2007, snow and ice blanketed the northeastern United States. JetBlue Airways stranded scores of passengers aboard its aircraft on the tarmac at John F. Kennedy International Airport (JFK). At 1 point during that day, JetBlue had 52 aircraft on the ground with only 21 available gates. JetBlue has

publicly admitted shortcomings in its systems that were in place at the time for handling such situations.

- On March 16, 2007, an ice storm hit the Northeast, causing numerous delays and cancellations and forcing passengers to endure long, on-board flight delays. In fact, several Office of Inspector General staff were flying that day and experienced a 9 hour, on-board delay.

Meeting Passengers' Essential Needs During Long, Onboard Delays Is a Serious Concern of Secretary Peters and the Department. As a result of the December 29, 2006, and February 14, 2007, incidents; Secretary Peters expressed serious concerns about the airlines' contingency planning for such situations. On February 26, 2007, she asked our office to do the following:

- Examine the airlines' customer service commitments, contracts of carriage, and policies dealing with extended ground delays aboard aircraft.
- Look into the specific incidents involving American and JetBlue, in light of whatever commitment these carriers made concerning policies and practices for meeting customers' essential needs during long, on-board delays.
- Provide recommendations as to what, if anything, the airlines, airports, or the Government—including the Department—might do to prevent a recurrence of such events and highlight any industry best practices that could help in dealing with such situations.

Our work in this area began March 12, 2007, with site visits to JetBlue Airways in New York (including JFK) and American Airlines in Texas—specifically, Dallas-Fort Worth International and Austin-Bergstrom Airports. During the past 30 days, we have done the following:

- Collected voluminous amounts of information and data from American and JetBlue regarding the events of December 29, 2006, and February 14, 2007. We are in the process of analyzing this information. While we are in the early stages of our review, we can report that American and JetBlue have revised their operating practices for mitigating long, on-board delays. For example, American instituted a new policy designed to prevent on-board delays from exceeding 4 hours. JetBlue also set a time limit of 5 hours maximum duration for any long, on-board delay away from a gate.
- Received information from other carriers providing service from Dallas-Fort Worth, Austin, and New York airports and met with officials from FAA air traffic control and those three airports. We are in the process of receiving contingency plans from the ATA airlines (system-wide plans) and the major airports they serve (each airport operator's plan).

We expect to brief the Secretary by the end of June and issue a report shortly thereafter.

Airlines Must Implement More Effective Contingency Plans. One observation we can share today regarding our current review is that contingency planning for extreme weather is not a new concern for airlines, as evidenced by the June 1999 Commitment provision, which states that:

- The airlines will make every reasonable effort to provide food, water, restroom facilities, and access to medical treatment for passengers aboard an aircraft that is on the ground for an extended period of time without access to the terminal, as consistent with passenger and employee safety and security concerns.
- Each carrier will prepare contingency plans to address such circumstances and will work with carriers and the airport to share facilities and make gates available in an emergency.

However, as we noted in our 2001 report, the airlines had not clearly and consistently defined terms in the Commitment provision such as “an extended period of time.” We also noted only a few airlines' contingency plans specify in any detail the efforts that will be made to get passengers off the aircraft when delayed for extended periods, either before departure or after arrival. Our opinion was then, as it is now, that this should be a top-priority area for the airlines when implementing their contingency plans, especially with long, on-board delays on the rise from 2005 to 2006—particularly those exceeding 4 hours.

In response to our 2001 report recommendations, the airlines agreed to do the following:

- Clarify the terminology used in their customer service plans for extended delays.

- Establish a task force to coordinate and develop contingency plans with local airports and FAA to deal with lengthy delays.

While a task force was formed, the effort never materialized as priorities shifted after September 11, 2001. We are examining airline and airport contingency planning as part of our ongoing review.

JetBlue and ATA Announced Initiatives To Address Long, Onboard Delays but More Needs To Be Done. These two initiatives address the recent events. First, on February 20, 2007, JetBlue published its own customer bill of rights. JetBlue plans to offer compensation in the form of vouchers for flight disruptions, such as cancellations. While this is a step in the right direction, this bill of rights is limited; JetBlue needs to clarify some of the terms. The JetBlue bill of rights only addresses 3 of the 12 Commitment provisions: flight delays and cancellations, onboard delays, and overbookings. Also, JetBlue needs to clearly define all terms in its bill of rights, such as "Controllable Irregularity," so that passengers will know under what specific circumstances they are entitled to compensation.

While JetBlue believes that its bill of rights goes beyond the Commitment provisions in some areas, re-accommodating passengers for flight cancellations is already required under its contract of carriage. Additionally, while JetBlue will compensate its customers for being bumped from their flights, compensation is already required under an existing Federal regulation but not to the extent of JetBlue's compensation of \$1,000.

Second, on February 22, 2007, ATA announced the following course of action:

- Each airline will continue to review and update its policies to ensure the safety, security, and comfort of customers.
- Each airline will work with FAA to allow long-delayed flights to return to terminals in order to offload passengers who choose to disembark without losing that flight's position in the departure sequence.
- ATA will ask the Department to review airline and airport emergency contingency plans to ensure that the plans effectively address weather emergencies in a coordinated manner and provide passengers with essential needs (food, water, lavatory facilities, and medical services).
- ATA will ask the Department to promptly convene a meeting of air carrier, airport, and FAA representatives to discuss procedures to better respond to weather emergencies that result in lengthy flight delays.

While we understand the pressures that ATA and its member airlines face in maintaining profitability in today's environment, we are concerned that the actions proposed merely shift responsibility from ATA to the Department. We agree that the Department must be an active partner, but ATA's proposed course of action is not significantly different than what the airlines agreed to do in response to our 2001 recommendations, such as "to establish a task force to coordinate and develop contingency plans with local airports and FAA to deal with lengthy delays."

As mentioned earlier, how to ensure airline customer service is clearly a policy issue for Congress to decide. Given the problems that customers continue to face with airline customer service, Congress may want to consider making the Airline Customer Service Commitment mandatory for all airlines.

However, there are actions that the airlines, airports, the Department, and FAA can undertake immediately without being prompted by Congress to do so. For example:

- Those airlines that have not already done so should implement quality assurance and performance measurement systems and conduct internal audits of their compliance with the Commitment provisions. The Department should use these systems to more efficiently review the airlines' compliance with those Commitment provisions governed by Federal regulation.
- The Department should revisit its current position on chronic delays and cancellations and take enforcement actions against air carriers that consistently advertise flight schedules that are unrealistic, regardless of the reason.
- The airlines, airports, and FAA should establish a task force to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and the airport to share facilities and make gates available in an emergency.
- The Department's Office of General Counsel; in collaboration with FAA, airlines, and airports; should review incidents involving long, on-board ground delays and their causes; identify trends and patterns of such events; and implement workable solutions for mitigating extraordinary flight disruptions.

That concludes my statement. I would be glad to answer any questions you or other Members of the Committee might have.

The CHAIRMAN. I thank you very much, sir.

And, Senator Stevens?

Senator STEVENS. Thank you very much, Mr. Chairman.

I would very much like to hear the second panel, so I'm not going to submit any questions at this time.

The CHAIRMAN. Senator Lautenberg?

Senator LAUTENBERG. Thanks, Mr. Chairman.

One thing I noticed in the testimony or Mr. Scovel—

The CHAIRMAN. You got your mic on?

Senator LAUTENBERG.—opened with a comment that says that oversight and enforcement of air traveler consumer protection rules are the responsibility of the Department, Office of General Counsel. Now, is that in the present format of the structure of the Transportation Department, the aviation division itself? Does the Counsel have an opportunity, or an obligation, to intervene in these things, or is this done at the Secretary's level? And should that be the policy, generally, as opposed to saying that a more active role should be taken by the General Counsel?

Mr. SCOVEL. Thank you, Senator Lautenberg.

As you pointed out, responsibility for pursuing and enforcing consumer protection requirements resides at the Department level, not with the FAA, which is sometimes a misconception on the part of many observers. The FAA plays an important role regarding flight rules; for instance, flight pay for flight time for pilots, duty time, departure sequence rules, and so forth; but, when it comes to consumer protection requirements, that's the responsibility of the Office of Aviation Enforcement and Proceedings within the Office of General Counsel at the Department. Their responsibility specifically is to enforce regulations that the Department has issued regarding customer service-related items, such as nondiscrimination on the basis of disability, fare changes, overbooking, baggage liability and responsibility, check-in requirements, and refund conditions and limits.

The Office of Aviation Enforcement and Proceedings does have responsibility to investigate when complaints are presented to it. One of the findings of my staff in its 2006 audit review was that the Office of Aviation Enforcement and Proceedings has sometimes been lax in pursuing those investigations. For instance, in 2006 we discovered at least one case, dating back to 2004, that, in fact, my staff had referred to OAEP, involving customer service provisions that had not yet been investigated by that office. I related, as well, in my opening statement, and my testimony for the record lays this out further, that sometimes the Office of Aviation Enforcement and Proceedings does not execute onsite compliance reviews, and, in our view, does not pursue sufficient compliance monitoring when a settlement agreement is reached with an airline as a result of a customer's complaint.

Senator LAUTENBERG. Mr. Scovel, does the DOT Airline Enforcement Office have sufficient staff working on general consumer complaints?

Mr. SCOVEL. To be entirely fair to the Department, it is my understanding that their resources have been limited in recent years.

I give credit to the Congress. A number of years ago, perhaps 5 or 6 years ago, they received a special appropriation with the idea of increasing the resources for this office so that they could pursue customer service-related inquiries. The Department has focused those inquiries largely on the civil rights side, and deservedly so; however, that has operated somewhat to the disadvantage on the consumer protection side, and, in recent years, their budget, especially their travel budget, for instance, to perform compliance reviews at the site of airline or airport complaint sites, has been limited.

Senator LAUTENBERG. Mr. Scovel, just because your review seemed so thorough as I listened to your statement, is there any question raised about the fatigue factor within the crew of an airplane by extending their hours of service far beyond what it should normally be?

Mr. SCOVEL. I know that's—that is a concern for both pilots, for airlines, certainly for passengers, and for the FAA. It's—I—I'm hesitant, at this time, to express any opinion on that, since it has not been a part of our ongoing study, specifically, crew fatigue. We haven't pursued that as a part of our ongoing study for the Secretary.

Senator LAUTENBERG. Thanks.

Mr. Chairman, I have one more question, for Mr. Reynolds.

We know that rail service can free up precious airport slots for more profitable long-distance flights. What is the administration doing to help develop efficient passenger rail service?

Mr. REYNOLDS. Thank you, Senator Lautenberg.

My office deals mostly with the aviation and international affairs aspects of the Department, so I am not as intimately familiar with the—all the details, but I do know that the Department feels that, you know, intercity passenger rail plays a role, and I think that a lot of that has been laid out in the President's budget proposal.

Senator LAUTENBERG. Thank you.

Thanks, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Boxer?

Senator BOXER. Thanks, Mr. Chairman.

I want to thank the panel.

Mr. Reynolds, your basic point to us, in your opening statement, was, "We would prefer it if the airlines did fix the problem, and not the Federal Government." I think that's right, we all would rather we weren't here today having to have people come before us and tell us of the horrors of what happened. But I will tell you this, that our constituents—in my opinion—don't really care who fixes it, they just want it fixed. They can't be treated like they're not human beings, and that's what has happened. So, whether the airlines fix it or we fix it, it needs to be fixed.

Now, Senator Snowe and I, after long and careful consideration, have put together a pretty modest bill that I think treats customers as human beings. And I think that's something that Congress needs to pass, because the airlines are not willing to pay attention to their own—their own document, their own pledge.

Now, I really appreciate the work of the Inspector General here. And, Mr. Reynolds, I want to ask you to respond to two of his rec-

ommendations. He's very clear here. He says, "Without Congress having to pass one thing, you, sir, are in a position to make things better." And he suggested three ideas. I'm going to focus in on two.

He points out that, when the airlines don't disclose chronic delays, that could be viewed as a deceptive practice—not telling people that you have these chronic delays. And he suggests that the Department should revisit its current position on chronic delays, and take enforcement actions against air carriers that consistently advertise flight schedules that are unrealistic, regardless of the reason. That's the first one. I want you to tell me if you agree with that.

And, second, he says that the FAA, airports, and airlines should establish a task force to coordinate and develop contingency plans to deal with lengthy delays—such as working with carriers and the airports to share facilities and make gates available in an emergency. Now, this seems like a brilliant common sense idea to me, because you sit out there, and the pilot gets on there, and he says, "Folks, I'm really sorry. I know you've been sitting here for 2 hours, but, guess what? Somebody's at the gate, they won't back up, we can't figure it out, no one's helping us, we have no option but to sit here." So, to have a task force that's ready to move in and solve the problem, seems to me to make sense.

So, those are two things. Are you willing to take these two ideas and implement them without Congress having to push you to do that?

Mr. REYNOLDS. Senator Boxer, the Department is, of course, very aware of the Inspector General's recommendations. They were part of his report in November. And the Office of Aviation Enforcement and the Department has taken them very seriously, and we are looking at them. We've responded to a variety of the—a variety of these recommendations, and, in fact, we are trying to—right now, we are looking at ways to better examine chronically delayed flights in terms of unrealistic scheduling to see if there's anything there. It is—

Senator BOXER. Well, sir, if I might—

Mr. REYNOLDS. Yes.

Senator BOXER. I'm sorry. And I do respect your view on the point, but I want to just get at it a little bit more—because I'm finished after this question.

You have an Inspector General. He's come in, and he's said, "You don't have to wait around for anything. You can do three things." I've asked you about two. One of them is pretty easy: start taking enforcement actions. And what you're saying is, "Gee, we've seen a lot of these things." I'm asking you about these two. Can you answer me? Are you open to taking enforcement actions against air carriers that continually advertise flight schedules that are unrealistic? And are you ready to develop contingency plans to deal with these lengthy delays?

Mr. REYNOLDS. Yes, we're absolutely open to taking—

Senator BOXER. Good.

Mr. REYNOLDS.—enforcement actions. And the Department has done that in the past. In the last 1980s—

Senator BOXER. I know, but I'm asking you about now.

Mr. REYNOLDS.—we had—

Senator BOXER. So——

Mr. REYNOLDS. Yes. I mean, and we always remain——

Senator BOXER.—I'm glad you said that. And could you follow this up in writing, in the next week, to tell me what you decided to do, and when?

Thank you, Mr. Chairman.

Mr. REYNOLDS. Absolutely.

The CHAIRMAN. Thank you.

Senator Snowe?

**STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE**

Senator SNOWE. Thank you, Mr. Chairman.

And I first want to say that I'm very pleased to join Senator Boxer in introducing this legislation concerning a Passenger Bill of Rights. Frankly, the airlines have no accountability, and it's obvious that the—that your Department is not demanding accountability on the part of the airlines. I mean, these are instances—when you're having these prolonged delays on the tarmac—that can be potentially life-threatening situations. You know, when you look at the American Airlines, 9 and 10 hours sitting on the tarmac. It was a diabetic individual that was in serious danger, that they finally returned to the gate. It doesn't matter what the statistics say, although I think the statistics are rather alarming. I mean, the Bureau of Transportation Statistics indicated that the high—that delays in February are the second highest rate ever. And then, when you combine that with the number of baggage lost, for example, when you think about one-quarter of all flights arrive late, more passengers got bumped in 2006 than in the previous year that this was reported in one of the press accounts, in all combinations, doesn't describe a very positive picture.

And I think the time has come to at least demand a reasonably based position, and that's why we're here today. And I think the legislation that Senator Boxer and I have introduced—for example, 3—basically 3 and a half hours sitting on the tarmac—3 hours, and it gives—if the pilot knows that the plane will be departing within a half hour, it would be 3 and a half hours, total.

And then it's left to the pilot's discretion in case it, you know, endangers passenger safety to leave the plane, for example. So, then it's up to the discretion of the pilot. I think that's a very modest approach.

These situations should not occur. That is the bottom line here. And so, Mr. Reynolds, why is that so difficult? I mean, why would you, you know, be opposed to that kind of requirement? Because your Department is not enforcing that standard, you're not enforcing accountability. This should not be happening.

And then, when you look at the record of the airlines with respect to their own policy at self-regulation—we had hearings here in 1999, because we had a series of incidents with another airline, as you'll recall, and I think it was in the Detroit-Fort Wayne Airport. And so, at that point, the airline industry said, "Yes, we will implement the Airline Customer Service Commitment." You listened to Mr. Scovel and his report. Pretty abysmal, when you think that during their review, they discovered that quality assurance

and performance measurement systems are being implemented at just five of the ATA airlines out of 13 members. Only five.

And then, if you go and look at the report, again, with respect to notification of delays to customers, you know, in—at the gates at the airports, said, “Based on our observations, 13 of 15 airlines at 17 airports nationwide, airline gate agents did not make timely announcements during 42 percent of the observations.” And it goes on and on.

So, we have a problem here. People make significant investments, you know, in buying—in purchasing a ticket, not to mention the cascade effect that it has, whether it’s their vacation plans, or it could be a family emergency, whatever the case may be. And I see that there’s no accountability. I mean, we’re at the airports every week. You know, we have a chance to observe. That’s the problem here. But it goes beyond the imagination to require anybody to sit on a plane for 9, 10, or 11 hours. And that should not happen. It shouldn’t happen once. And that’s what this is all about here today.

And so, our legislation is a very modest approach to what could be a very serious situation where people have no choice, because, you know, they’ve been perpetrated with this abuse of sitting on the plane for that long, and have no choice, no functioning restrooms, no basic necessities, let alone of whether or not they have access to their medications. They might have been checked.

So, that’s what the situation is here at hand, and I don’t hear anything to suggest that—how this is going to be altered, because they’ve already abandoned, to an extent, this airline customer service commitment.

So, do you have any response to that? And how do you think that they’re going to correct it, to have the self-correcting, self-regulating policy that they’ve already distanced themselves from, they’ve retreated from, in many instances already, based on the Inspector General’s report?

Mr. REYNOLDS. Well, we certainly understand and appreciate all the efforts that people are undertaking to address tarmac delay issues, and we’re studying the proposals that are out there. Obviously, we’ve asked the Inspector General to look further into the specific incidents and offer recommendations. Secretary Peters and the Department were very troubled by these incidents, as well, and the fact that people were out there for extended periods of time. Of course, again, as a general matter, we’d like to see the marketplace discipline them. And we’ve already seen a little bit of that at work with American Airlines and JetBlue taking some steps in the wake of the incidents that they experienced. Nevertheless, we are awaiting the outcome of the Inspector General’s report, in light of, also, his earlier report, in November, to see what might be the further appropriate action for us to take.

Senator SNOWE. Do you think 3 hours is long enough?

Mr. REYNOLDS. That’s a very difficult question.

Again, I don’t know that we want to, you know—a specific remedy, at this point, it’s difficult to say. One-size-fits-all solution has—can have many downsides. Some passengers may want to wait an extra hour if it means getting to their destination; if they have to get off the aircraft, or the aircraft has to be diverted to a

gate, it may mean that the plane never makes its destination at all that day. And some people may need to—want to continue their flights. So, there are a lot of factors. Some—for some, it may be 4 hours, it may be more. Certainly, it's an issue when passengers are on a plane for an extended period of time, that some of their basic needs to—are being met. And that's one of the things specifically that we asked the Inspector General to look into.

Senator SNOWE. Well, I, frankly, think that if all airlines had to abide by the same standard, that the system would work. And there is a point in drawing that line. The question is, you never know. One hour becomes another hour, so you've got 3 hours, 4 hours, 5 hours, and 6 hours, and, obviously, on and on it goes, because they never know. And I think that's the problem, that ultimately, as we saw, you know, in these two instances, where good judgment was not exercised, and the passengers have no control over that circumstance of that situation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Rockefeller?

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mr. Reynolds, I think, in some ways, actually, this sort of helps you, but it may embarrass you. The—I was not here, because we had an extraordinarily long caucus, which caused Frank, and then Barbara and myself, to be very late, for which we apologize. But the testimony that you gave, you didn't sit down last week or last night and write that, did you? That testimony, in fact, had to be vetted by the Office of Management and Budget before it could be presented to us. Is that correct?

Mr. REYNOLDS. That's true.

Senator ROCKEFELLER. And I want the audience to understand the meaning of that. This is true with every single Agency—and it's true in the intelligence community—committees—every single relatively high representative of any of our Cabinet agencies, they are not free to say what they feel. Now, there may be a convergence from time to time about what they are allowed to say by the Office of Management and Budget, which, as far as I know, doesn't have a whole slew of people out at any airports, but it needs to be understood that, in a sense, it doesn't demean this hearing, but it downgrades it from your point of view and from mine. I'm not going to ask the IG, because I assume that the IG does his own.

Mr. SCOVEL. That is correct, sir. We are subject to screening by no one.

Senator ROCKEFELLER. That's correct. And that's good. So, you are answering questions, which you might answer in a very different fashion if you were a free person, even though you're a very high official.

[Laughter.]

Senator ROCKEFELLER. And I want people to understand that, because it's true in every committee—in Armed Services, in Commerce, and anywhere else, it's always true, the Office of Management and Budget—the budget being the amount of dollars that you

have; management being what kind of policy you will have—is determined by them, and you have to follow.

Now, having said that, I am particularly offended by what I thought we'd discussed here quite a long time ago and Senator Boxer brought up, and that's the question of delay and cancellation notices. There has been some modicum of improvement—and I'm traveling a lot, but it still is way off the mark. And it causes people to miss flights which they might otherwise make, knowing that they were not going to make that flight. Happened to me the other day in Tennessee, where there was a flight that was canceled, and I said, "Good, well, we can make this next one coming up." And then, it turned out that the flight which was canceled actually wasn't, and it was actually about to land at the airport. And so, it was a—it was a happy ending. But there can be no excuse for that.

Now, that's my first point. And I'm not asking you to respond to it.

The second is, I think that this panel, which Trent Lott and I co-chair under the direction of Senator Inouye and Senator Stevens—and I agree on virtually all matters—that you don't have money. I mean, it's like this question of Veteran's hospital, building number 18. What are the Veterans doing about it—what are the Veterans hospitals doing about it? They're under a budget. The war is not in the budget. That's borrowed money from China, Japan, South Korea, et cetera. So, it's not in the budget. But the Veterans Administration is in the budget, and it has to live within that budget. That budget has always been short, under both Democrats and Republicans. It has always been short. And now we have people coming back with wounds that they never even conceived were possible, and we don't have the finances to be able to help them. Well, we're going to change that this year. We're going to change that this year. I simply share the frustration of customer service.

Now, I'll say one thing, which may depart a little bit from what others have said. I think the airline business is the most complicated business in the world. You're basically having to operate off an analog air traffic control system. We do not have the money, at this point, to come up with a digitalized air traffic control system. When we do, we're going to have to build one, while still operating the other; therefore, paying for two—so that the measurement between how close planes are to each other, how quickly they could land, what the difference in altitude and all of that is, will—is just one of the complications that we face.

I don't think that you can cure all customer problems. We had an example here a number of years ago where somebody wanted to actually lay out the number of inches which could apply between seats in economy class. A Member of Congress saying there can be this many inches, and there has to be, on every single plane. And, frankly, on that, I don't think Congress has any business doing that, simply because we don't know, and we can't. But I think the performance—I think you're trying, but you don't have any money, so you don't have any people. And I wish you could just say that. I'd almost like to ask you to, but I don't want you to, because it would be—I don't know what it would do to you.

[Laughter.]

Senator ROCKEFELLER. But you don't have the people to go out and investigate all of these different problems. The customer service plans that were agreed to, you know, you don't have the people to go out and look at all that. And so long as that's true, problems are going to continue.

So, Mr. Chairman, I just apologize for taking more time than I should, but it's a great frustration to me, because Americans now do travel. I can remember—West Virginia is not—it's not San Francisco, let me put it that way. All right? And it used to be that a lot of our people didn't fly. Now a lot of our people do fly. So, this becomes more and more important—hold-ups, cancellations; in bigger airports, huge crowds. Is it your fault that we haven't reconfigured O'Hare Airport? If we spent \$12 billion, reconfigure those eight landing runways, we could change the entire American aviation system, make it 30 percent more efficient. We don't have that money. You haven't pushed for that money. My guess is, you want that money.

I went out to Chicago for a hearing on that. Everybody in the world agrees with it. But the Department of Transportation doesn't, and that's for a budget reason, because money is being spent for different ventures overseas or tax cuts or for other things that are felt to be more important.

So, my, sort of, sense of this is that it's very sad—a very sad situation, because, number one, if you had the people, you could do a lot better. Second, if you had the people who had the—and they had the authority, they could go in, and they could take some situations and really scare some airlines, and make enormous improvements, as you indicated JetBlue and American have made some improvements. And I'm not here to judge that. I'm simply here to say that the system of where the executive branch of Government cannot come clean to the legislative branch of Government in a formal hearing is, I think, a great sadness. And I wish that system would end and you could talk exactly how you feel.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.
Senator Lott?

**STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Mr. Chairman, I'll pass for now. I'd like to hear the next panel. Thank you very much for having the hearing.

[The prepared statement of Senator Lott follows:]

PREPARED STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

I am pleased that Senator Inouye has called this afternoon's hearing on airline service improvements.

Recent forecasts show that we need to modernize our air traffic control system by 2015 or face severe gridlock in our skies. With such a large amount of people who depend on air travel in the U.S., it is vital that we address these issues sooner, rather than later.

The recent incidents in which airline passengers were delayed for several hours have given us a taste of what the aviation industry could be like if we don't move out aggressively on modernizing our air traffic control system.

Now, I think I can safely say that just about everybody in this room has experienced some sort of delay or inconvenience while traveling on an airline—I know I

most certainly have. Some experiences are worse than others, which is understandable, but that's just the nature of the beast.

I think the real solution to this problem will come from modernizing the air traffic control system to reduce delays and not having the Federal Government dictate how long you have to sit on the tarmac before you get a glass of water. We need an air traffic control system that reduces congestion and that does a better job of dealing with bad weather.

But, this shouldn't let the airlines off the hook. With traffic back to pre-9/11 levels and still on the rise, airlines need to come up with their own plans for properly managing severe delays that best fit their structure and allow them to provide safe and comfortable flights.

I look forward to hearing from the witnesses.

The CHAIRMAN. I have just one question.

Much has been said about delays and cancellations, et cetera. Do you believe that legislation is necessary?

Mr. REYNOLDS. Again, Senator, I think we'd like to think a little bit more on the problem, have the benefit of the Inspector General's report on these particular incidents, and see what further recommendations his office may provide to us.

Of course, we're always willing to work with this Committee on anything that it may be moving forward.

The CHAIRMAN. Thank you very much. Thank you very much, Mr. Reynolds and Mr. Inspector General.

Our next panel is the Consumer Program Director of the U.S. Public Interest Research Group, Mr. Ed Mierzwinski; Executive Director of the Aviation Consumer Action Project, Mr. Paul Hudson; Chairman of the Business Travel Coalition, Mr. Kevin Mitchell; Spokesperson and Founder, Coalition for Airline Passengers' Bill of Rights, Ms. Kate Hanni; Program Coordinator, Center on International Cooperation, Mr. Rahul Chandran; and President and CEO, Air Transport Association of America, Mr. James C. May.

On behalf of the Committee, welcome to the hearing, and thank you all for your testimony.

May I call upon Mr. Mierzwinski? I know I've mispronounced it, but—how do you pronounce that name, sir?

Mr. MIERZWINSKI. Mierzwinski, sir. And I hope I pronounce Inouye right.

The CHAIRMAN. That's pretty close.

Mr. MIERZWINSKI. That's pretty close?

The CHAIRMAN. Yes.

Mr. MIERZWINSKI. Thank you, Mr. Chairman.

STATEMENT OF EDMUND MIERZWINSKI, CONSUMER PROGRAM DIRECTOR, U.S. PUBLIC INTEREST RESEARCH GROUP

Mr. MIERZWINSKI. I'm Ed Mierzwinski, and I am the Consumer Program Director for the Public Interest Research Groups. And, Chairman Inouye, Senator Stevens, and members of the Committee, it's a privilege to represent the nonpartisan, nonprofit PIRGs here at this hearing today.

We are here today to support, on behalf of our one million members and air travelers in general, S. 678, the bipartisan Airline Passengers' Bill of Rights Act of 2007 offered by Senators Boxer and Snowe.

We believe that consumers have often complained about a number of problems on airplanes. They've complained about being late,

they've complained about chronically being late, they've complained about the seat sizes on some airlines, they've complained about the new fees, but things have gotten to a new level with the recent problems that customers have faced when they have been stranded on the tarmac, or even left at airports by planes that have taken off without them, in some of the recent cases. And my fellow witnesses, who have been victims of some of these cases, are better qualified than I am to speak about some of these matters. So, in the interest of time, I won't comment on them.

But whether these delays and significant hassles passengers are facing are due to the weather, due to air traffic control systems, due to security after 9/11, due to carriers gaming the on-time take-off data system to appear to be better than they actually are, or due to airline cost-squeezing, is not the point today. What is at issue is simple: consumers should not be treated like cattle and they should have rights and remedies when they are so treated.

Safety is our most important factor, and security is as important as safety. But customers should not be simply treated on the basis of the market. I thought that I heard the Department's testimony today infer that, "Well, a couple of airlines have had a couple of problems. They've said they're going to do better." Does that mean that every airline will get one bite of the apple? Does that mean that every airline will have a chance to mess up as badly, and then say, "We're sorry, we'll do better"? We think we need minimum standards, enforceable minimum standards.

As has been widely pointed out by several of the witnesses and Senators today, these are not one-off incidents, these are incidents that have been occurring for years. The airlines made promises that they have not kept, 8 years ago, and that has been a problem, as well.

The proposed legislation from Senators Boxer and Snowe should be enacted immediately. It simply states that passengers on planes that have left the gate have a Federal right to adequate food, potable water, and working toilets during delays, and, importantly, a right to deplane if the problem lasts for more than 3 hours, or 3 and a half hours. We would urge you to add to this bill the right to adequate ventilation, reasonable temperatures, and medical access, if needed. We would urge you to consider extension of appropriate rights to passengers whose planes have left without them after they've been diverted to other airports, as well.

We also believe that any final legislation should make these rights more enforceable to consumers, by consumers. And, as has been pointed out by the Inspector General, the enforcement by the Department has been inadequate. They enforce the rules under their unfair and deceptive practices regulations, but they don't often impose fines or penalties. One of the big problems here is that a 1992 Supreme Court decision took away the right of State attorneys general to enforce their unfair and deceptive practices rules and regulations against the airlines in an interpretation of the 1978 Act. We would encourage any final legislation to also reinstate the right of State attorneys general to enforce at least the Federal law, and, ideally, to enforce their own unfair and deceptive practices under all of their State laws.

In addition, we would urge you to give consumers greater private rights of action in the contracts of carriage, which are currently merely contracts of adhesion that largely immunize the airlines, rather than provide a fair contract. Second, we would urge you to increase the penalties for bumping and the penalties for lost baggage. The penalties for bumping, in particular, have been frozen at \$400 for years and years and years.

We would also urge you to consider taking a small amount of airline funds and form an independent congressionally chartered consumer group to represent consumers before the Department. And whether or not such a passenger advocacy group is established, the Committee should compel the FAA and the DOT to do a better job.

Finally, I would point out that—some of the comments that Senator Lautenberg made—in my written testimony I do point out that consumer groups have long supported his proposals. The airlines use scarce resources—gates, runways, and other public resources—that might be better served by giving us different modes of transportation, by encouraging high-speed rail and taking some of the pressure off the airlines.

So, I thank you for the opportunity to testify today in support of a strong Passenger Bill of Rights bill.

[The prepared statement of Mr. Mierzwinski follows:]

PREPARED STATEMENT OF EDMUND MIERZWINSKI, CONSUMER PROGRAM DIRECTOR,
U.S. PUBLIC INTEREST RESEARCH GROUP

Mr. Chairman Inouye, Senator Stevens, Senator Boxer and members of the Committee: Thank you for the opportunity to present the views of the U.S. Public Interest Research Group,¹ which serves as the non-profit, non-partisan federation of state PIRGs. We are pleased today, on behalf of our one million members and all airline passengers, to support S. 678, a proposed Airline Passengers' Bill of Rights, as introduced by Senators Boxer and Snowe, and to offer other comments on airline customer service.

The frustrations travelers generally have with airlines are widely-reported. Major newspapers have columns, such as *The Wall Street Journal's* "The Middle Seat," and *The New York Times's* "On the Road" and "Memo Pad" from Joe Sharkey. Frustrated consumers have created websites such as <http://www.untied.com/> (United), northworstair.org/ (Northwest) and dontflycontinentalairlines.com.² Travel sites and online newsletters provide tips to frequent travelers about a wide variety of problems air travelers face. Among the issues discussed are the following:

- flights that are chronically late,
- what to do if the airline loses your bags,
- the latest Transportation Security Administration issues,
- your incredibly shrinking airline miles (due to increased mileage requirements for "free flights," more blackout dates, and the threat of airline bankruptcy),
- shrinking seat sizes on some airlines, where you pay extra for a "real" seat,
- obnoxious fees and harsh restrictions for changing your flight for virtually any fare class, or new nuisance fees for all-of-a-sudden overweight or "too-manypieces" of luggage, and even fees for so-called "snacks" or "meals" onboard,
- the non-responsiveness of airlines to reasonable and legitimate service complaints, and
- numerous other problems.

But lately, the news has been about more than these hassles. It's about passengers being trapped on planes sitting on runways, in primitive non-hygienic conditions, or even left at airports to fend for themselves. The incidents appear to be getting worse:

¹. uspirg.org.

²Note that these are examples. Not all these sites are still active. Others exist.

- Hundreds of JetBlue passengers were stranded for hours in planes on runways in mid-February, when weather incidents affecting some flights cascaded into a multi-day fiasco. While JetBlue has made all the right promises, it is only one airline.
- Similarly, in late December, American Airlines passengers were stranded on runways in Austin, as my fellow witness Kate Hanni is more qualified to explain, since she was there for 9 hours, stuck on one of those planes, without food, water or working toilets, or even helpful information other than airline propaganda announcements.
- 220 passengers on two separate flights were left stranded in Cheyenne on 21 December by United Express after their diverted planes inexplicably took off without them.³ In February, two more planes, a United Express and an American Connection flight, similarly abandoned passengers in Nebraska.⁴

Whether these delays and significant hassles passengers face are due to the weather, the air traffic control system, increased security due to 9/11, carriers gaming the on-time takeoff data or airline cost-squeezing is not at issue here today.

What is at issue is simple: consumers should not be treated like cattle and should have rights and remedies when they are so treated.

It is important to note that these incidents are not new isolated one-off incidents. Similar runway problems—such as a well-publicized Detroit snowstorm that left passengers stranded for 8½ hours in 1999—as well as an increasing number of passenger complaints, led to Congressional consideration of an airline bill of rights in 1999–2000. As then state attorney general and current U.S. Senator Ken Salazar wrote to his Congressional delegation in 2000:

As you are aware, airline passengers in Colorado and throughout the country are experiencing a disturbing number of flight delays and cancellations. This is particularly true with United Airlines, the primary carrier serving Colorado. I am particularly concerned about the reported accounts of United's failure to provide its advertised air transportation services, and by allegations that United is providing false or misleading information to the traveling public. Additionally, there are accounts of United failing to accommodate its stranded customers pursuant to applicable airline regulations.⁵

Yet, following a series of largely-failed voluntary promises by the airlines, this promising airline bill of rights effort was delayed. In February 2001, DOT Inspector General Kenneth Mead had told this committee⁶ that delays and complaints were up, despite the voluntary commitment,⁷ which included a promise to “*Meet customers’ essential needs during long on-aircraft delays.*”

Then, any review of the airline promises was largely shelved after the tragic events of 9/11. As it should have, attention turned to safety and security. Yet, the decline in air travel that occurred may have masked the strains on the system that now is again at the breaking point. Now, 6 years after 9/11, with air travel volumes again at peak levels, the same customer service problems that were not addressed in 1999 have returned.

In our view, while safety and security must remain the top priorities of our air travel system, passengers still deserve an enforceable bill of rights. The market has

³“Airline officials say the jets flew without passengers to Kansas City and Indianapolis on Dec. 21 because the jets were needed for other routes.” See “Abandoned” In Cheyenne, by Gary Stoller, *USA Today*, 20 February 2007, available at http://www.usatoday.com/travel/flights/2007-02-19-cheyenne-coverusat_x.htmst visited 10 April 2007.

⁴See “2 more flights abandoned fliers on way to Denver,” by Gary Stoller, *USA Today*, 21 February 2007, available at http://www.usatoday.com/travel/flights/2007-02-20-airport-abandoned-usat_x.htmst visited 10 April 2007.

⁵Letter of 9 Aug. 2000 to Congressional delegation re “Deceptive Practices by Air Carriers” available at http://www.ago.state.co.us/press_detail.cfm?pressID=567 Last visited 10 April 2007.

⁶Hearing on the *DOT Inspector General’s Final Report on Airline Customer Service*, U.S. Senate Committee on Commerce, Science, and Transportation, Statement of The Honorable Kenneth M. Mead, Inspector General, Department of Transportation, 13 February 2001, available at <http://commerce.senate.gov/hearings/0213mea.pdf> Last visited 10 April 2007.

⁷From the Mead testimony: The Airlines Commit to: Offer the lowest fare available, Notify customers of known delays, cancellations, and diversions. On-time baggage delivery, Support an increase in the baggage liability limit, Allow reservations to be held or canceled, Provide prompt ticket refunds, Properly accommodate disabled and special needs passengers, Meet customers’ essential needs during long on-aircraft delays, Handle “bumped” passengers with fairness and consistency, Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration, Ensure good customer service from code-share partners, Be more responsive to customer complaints.

failed to adequately provide customers with the minimum standards of civilization when they travel. Neither airlines nor Federal regulators are adequately accountable.

The proposed legislation from Senators Boxer and Snowe should be enacted immediately. S. 678, the Airline Passengers' Bill of Rights, addresses the worst of these problems in a well-thought-out and appropriate way. It simply states that passengers on planes that have left the gate have a Federal right to adequate food, potable water and working toilets during delays, and importantly, also have a right to deplane if the delay lasts more than 3 hours.

We would urge you to extend these basic rights to include rights to adequate ventilation, reasonable temperatures and medical access if needed.

We would urge you to consider extension of appropriate rights to passengers of diverted flights as well.

In the 21st century, nearly one hundred years after scheduled passenger airline service began internationally and nearly forty years since men first walked on the moon, these are reasonable requests.

We also believe that any final legislation should make these rights enforceable. We would also urge the Committee to review some of the other effects of the 1978 Airline Deregulation Act. For example, following concerns raised by state attorneys general in the 1980s that the Act had resulted in violations of state unfair practices acts, and a failure by Federal regulators to protect passenger rights, the attorneys general proposed a set of standards, after finding in 1988 that:

Consumer dissatisfaction with the airline industry has reached crisis proportions. Federal agencies have focused their attention on airline scheduling problems, on time performance, safety, and other related issues, but have not addressed airline advertising and frequent flyer programs. Unchecked, the airlines have engaged in practices in these areas that are unfair and deceptive under state law.

Yet, after the attorneys general attempted to negotiate with the airlines to treat consumers more fairly, the airlines successfully obtained a Supreme Court ruling sweepingly eliminating any state authority over airlines, even against deceptive advertising of their prices.

A 2000 letter⁸ to Congress by Iowa Attorney General Tom Miller explains:

Under a 1992 U.S. Supreme Court decision⁹, *Morales v. Trans World Airlines, Inc.*, U.S. 374 (1992), State Attorneys General are blocked from enforcing their state consumer protection laws against airlines. The Court held that states are preempted under the Airline Deregulation Act of 1978 [Pub. L. 95-504] from taking action against airlines, even if the airlines have engaged in deceptive and unfair practices. The decision says states are preempted from taking action relating to advertisement of rates, services, and other matters.

Attorney General Miller's 2000 letter went on to support an amendment, which we support today.

We are asking Congress to eliminate the preemption. . . . The amendment would simply state that the Airline Deregulation Act does not prevent State Attorneys General "from enforcing any state laws prohibiting unfair or deceptive business practices or unfair methods of competition with respect to air transportation or the advertisement and sale of air transportation services."

In addition to the rights enumerated in S. 678 and the reinstatement of attorney general authority, we urge that any final legislation adopt additional rights for airline passengers:

1. Make involuntary bumping and lost/damaged baggage rules subject to automatic inflationary increases. Require that bumping reimbursement, including for voluntary bumping, always be in cash or cash-equivalent flight coupons, not in what are often currently-provided—future air travel coupons that are often impossible to redeem due to blackout dates and other limits.¹⁰

⁸Letter of 15 September 2000 to U.S. Senator Tom Harkin, available at http://www.state.ia.us/government/ag/consumer/press_releases/airline-preemption-releasefor_web.html. Last visited 10 April 2007.

⁹The opinion of the Court, including the Attorney General Revised Guidelines as an appendix, is available here <http://www.law.cornell.edu/supct/html/90-1604.ZO.html> Last visited 10 April 2007.

¹⁰Even the DOT acknowledges these deficiencies and warns passengers to ask: If the airline offers you a free ticket, ask about restrictions. How long is the ticket good for? Is it "blackout

2. Give consumers greater private rights of action in contracts of carriage, which are currently merely contracts of adhesion that largely immunize airlines rather than provide a fair contract.
3. Establish an independent airline consumer protection group with some small increment of currently-collected passenger and airline facility taxes. The group should have party-intervenor status to represent passengers in any administrative proceedings of the Department of Transportation, the right to file comments at the DOT and FAA, the capacity to publish an independent and passenger-friendly analysis of the on-time, complaint and other data now merely data-dumped by the FAA, to advise consumers on airline complaints, etc.
4. Whether or not such a passenger advocacy group is established, the Committee should compel the FAA/DOT to more effectively use the power of the Internet to provide passengers with more and enhanced information about the cost of flights, chronically delayed flights and other airline quality indicators. The department's current websites are not helpful to consumers.
5. Airlines themselves should be required to post information about their own lowest-cost flights on their Internet sites, and should be required to inform prospective customers more clearly than in current murky codings about the on-time performance of chronically-delayed and canceled flights. Airlines should be required to post the Airline Passenger Bill of Rights at gates in terminals as well as on ticket jackets and websites.
6. The Airline Passenger Bill of Rights disclosures should include clearer and better disclosure of other rights, such as the involuntary bumping and lost/damaged baggage compensation rules.
7. We also urge the Committee to conduct additional oversight of the DOT's customer satisfaction and complaint handling effectiveness.

In addition, we would urge the Committee to consider some of the larger issues about the U.S. transportation system that have led to some of the pressures that the airlines are under that may contribute to these on-time and runway stranding problems. We call your attention to prescient testimony by Mark Cooper of the Consumer Federation of America before this committee¹¹ immediately following 9/11:

In the longer term, building a survivable transportation network requires redundancy and diversity of transportation options, as well as air travel decentralization. Here are some ideas that should be considered and debated.

First, we should improve ground transportation, particularly high-speed rail in high density air corridors. This could relieve a substantial part of the load in the most densely traveled routes without imposing significant indirect costs (increased travel time) on the public. It would also ease runway overcrowding at some airports. It would probably require the airlines to cut back on some of their most densely traveled and profitable routes for the sake of the public interest.

Commercial operations that require plane changes by driving traffic through hub and spoke networks make economic sense for the air carriers, but they are heavy users of very scarce resources—take offs, landings and air traffic control. For consumers, however, the hub and spoke system has led to domination of routes in some regions by a single carrier, resulting in higher ticket prices. These networks also impose a transaction cost on the public that may increase substantially—boarding time. Concentrating traffic is profitable for the airlines and it may even be efficient, but it may not be in the public interest, given the new traveling reality.

We want to thank you for the opportunity to provide our views to the Committee today. We look forward to assisting the Committee as you move forward on this important legislation.

The CHAIRMAN. Thank you very much, sir.
May I now recognize Mr. Hudson?

out” during holiday periods when you might want to use it? Can it be used for international flights? Most importantly, can you make a reservation, and if so, how far before departure are you permitted to make it? See <http://airconsumer.ost.dot.gov/publications/flyrights.htm>. Last visited 10 April 2007.

¹¹Hearings on the *Financial Status of the Airline Industry*, U.S. Senate Committee on Commerce, Science, and Transportation, 20 September 2001, statement of Dr. Mark Cooper, Consumer Federation of America, available at <http://commerce.senate.gov/hearings/092001Cooper.pdf>. Last visited 10 April 2007.

**STATEMENT OF PAUL HUDSON, EXECUTIVE DIRECTOR,
AVIATION CONSUMER ACTION PROJECT (ACAP)**

Mr. HUDSON. Thank you, Mr. Chairman. I want to thank you for asking me to testify here today, Chairman Inouye and members of the Committee.

My name is Paul Hudson. I am Executive Director of the Aviation Consumer Action Project that's acted as a voice for air travelers on national aviation issues since, believe it or not, 1971.

I was actively involved the last time this came up, now about 7 years ago, in the Congress. That is, to enact some rights for airline passengers. Unfortunately, at that time, it did not pass. The airlines, as has been pointed out here, said they would do it voluntarily. Well, we're now in take 2, and clearly it has not worked.

I think a large reason why we haven't seen the problems that we're now seeing is because shortly after that congressional effort was abandoned, we had a recession. That lowered air traffic. Then we had 9/11, and it dropped off a cliff. And it only came back very slowly. So, just now, we are seeing air traffic reach the levels it was at prior to that time.

The root cause is obviously too much air traffic for the infrastructure we have, but there are many things that could be done, with appropriate regulation, that would greatly ameliorate the problems we have now. When I hear that, you know, we should let the market take care of delays and scheduling and air traffic, I would say, does anyone believe that if we have congestion on roadways, we should leave it up to the drivers and to their employers? Should we get rid of stop signs and traffic lines and let the market take care of it?

Now, after 9/11, the market took care of it, and, while all air traffic went down, short-haul flights dropped off a cliff. The market said, "You're too unreliable, you're too slow, and we're getting in our cars with our cell phones, we're getting on teleconferences, and we're just not going to do it."

Now, there are bad actors in the present system, and there's bad behavior. What you're seeing with—I would not call it stranding. That used to be considered what happened when you were in an airport. I would call it wrongful imprisonment. In fact, when cases have been brought, like the Detroit cases, where I—I represented ACAP and a number of people there; and, by the way, the number was not a few hundred, it was 4,500—the courts have said, "You can't do that. It's intolerable." And to keep people even 3 hours, I think, is unacceptable, when you consider that most flights are 2 hours or less.

If you go look behind this, you'll find that much of the reason has nothing to do with weather. In fact, the DOT report that has come out most recently would indicate only 5 percent of delays are based on extreme weather. Most of these delays are based on financial decisions made by the airlines. And my testimony goes into the details of this.

But I would just like to leave the Committee with four points that we think would greatly ameliorate the present situation:

One is robust disclosure of the on-time statistic, which is now available, but you have to ask for it. Most people will not book a

flight if it's going to be late 50, 60, 80, even 100 percent of the time.

Second would be appropriate compensation for delays that are excessive and are clearly the fault of the airlines. And that can be defined, it doesn't require elaborate investigations.

Third, get rid of deceptive scheduling. Last statistic is, as of February, there were 175 flights that were regularly—that is over 80 percent of the time—delayed. And these weren't small delays. We're talking half an hour to 2 hours. My testimony lists some of the worst cases.

Fourth, there needs to be enforcement of rights. If rights have no enforcement, they are meaningless. The passenger—customer service procedures of the airlines basically say that if you write them a complaint, in 60 days or so they'll send you a response. Most likely it's going to be, "We don't agree with you. End of story." That does not provide any relief. ACAP gets many of these complaints that are copied from the Department, and we see this all the time.

And finally, there needs to be mandatory minimum reserve capacity. Since deregulation, airlines are now operating with generally less than 1 percent reserve capacity. That means that, every single day when pilots are sick, planes are out for maintenance or for other reasons, flights are canceled. No system can operate reasonably, reliably, unless there is a reserve capacity. It's in each individual airline's interest to keep that reserve very low. And now what has happened is, the cost is being passed to the passenger and to the public and, finally, to the U.S. economy.

I'd be glad to answer any questions, and I'd ask that my written testimony be submitted for the record.

Thank you.

[The prepared statement of Mr. Hudson follows:]

PREPARED STATEMENT OF PAUL HUDSON, EXECUTIVE DIRECTOR,
AVIATION CONSUMER ACTION PROJECT (ACAP)

Introduction

Good Afternoon Chairman Inouye, Vice Chairman Stevens and members of the Committee. My name is Paul Hudson. I am Executive Director of the Aviation Consumer Action Project (ACAP) which has acted as a voice for air travelers on national aviation issues of safety, security, and airline passenger rights and interests since 1971. Thank you for inviting me to testify today. I would like to make some brief summary comments and would request that my full written testimony be submitted for the record.

The Situation, How Bad Is It?

The situation today can best be described as "déjà vu all over again", as the problems that nearly brought the national air transportation to its knees in 1999–2000 have now re-emerged. With one of three flights now delayed, one of twenty flights being canceled, one of 100 checked bags being mishandled, and most recently passengers on JetBlue and some other airlines being involuntarily detained in aircraft for up to 11 hours on the tarmac at Kennedy Airport, the situation requires prompt government and congressional action to prevent a new crisis, one that will not only cause hardship for airline passengers, but could negatively impact safety and the U.S. economy.

The root cause of the current movement toward chronic air transportation congestion and periodic gridlock is record high air traffic that strains the air transportation infrastructure. The inadequate number of airports around Chicago, New York and a few other cities which are major choke-points in the system, the lack of reserve capacity of aircraft and flight crews, the lack of government oversight of airline scheduling practices and contingency planning for disruptions, has resulted in an air transportation system that is both vulnerable and deteriorating. It now takes

longer to travel by air than it did 30 years ago, and the situation is much worse in high traffic areas and at peak travel times. In the past year alone, flight delays are up nearly 20 percent, denied boarding or bumping is up 20 percent, mishandled baggage is up 32 percent, and formal passenger complaints are up 50 percent. (Source: April 2007 *Air Travel Consumer Report*, U.S. DOT and statistics at U.S. DOT website).

What Should Congress Do?

Over 35 years ago, Congress enacted legislation that deregulated the airline industry, abolished the Federal agency that had regulated air fares and terms of service, the Civil Aeronautics Board (CAB). The remaining Federal agency, the Federal Aviation Administration (FAA), regulates air safety, operates the air traffic control system and provides subsidies and grants to airports. There is also a small aviation consumer office in the U.S. DOT that receives airline service complaints, collects data from the airlines and publishes monthly statistical reports. And of course since 9/11, the Transportation Security Administration has operated the aviation security system. U.S. airports are still owned and operated by local government authorities, who control the access to major airports by airlines.

Airlines are now free to set fares as they see fit, and can compete on price, service and amenities. Barriers to entry of new airlines are now lower than they have ever been. This has brought benefits to the traveling public, but also has resulted in new problems that now demand your attention.

Congress must, in our view, not only address the problems that have caused national headlines in February and are the top passenger complaints (*i.e.*, flight delays and cancellations and mishandled baggage), but are only the tip of the iceberg. It must also address the underlying problems of the national air transportation system.

Stranding and Involuntary Detention in Grounded Aircraft

Passengers should be given the opportunity to deplane when a flight is delayed more than 2 hours, and airlines should also be required to compensate passengers for more than a 2 hour delay on a per hour basis. In many cases passengers can get alternate transportation or may want to cancel their trip, if they can escape the wrongful imprisonment that airlines now increasingly impose on passengers.

There is a little known financial incentive that flight crews have to pull away from the gate (and not go back) even if they know the flight is not taking off for a long time, if at all. Most airlines only pay flight attendants and sometimes pilots from the time that the cabin door closes. This work rule goes a long way to explaining some of the more ridiculous stranding situations.

This reform would also remove another financial incentive airlines now have to over-schedule flights that they know are going to be delayed or canceled due to overcrowding or weather conditions. By lying to and fooling the passengers, then involuntarily detaining them on aircraft, they avoid the massive cancellations, defections to other airlines, and financial losses that would occur if they provided honest disclosure and scheduling. Instead airlines usually blame the weather, FAA air traffic control or mechanical problems rather than their own practices.

Delay and Cancellation Abuses

Reducing stranding and delay abuses also requires *enhanced disclosure of the on-time statistic for each flight*. This figure is now available, but the passenger must ask for it. All persons providing reservations services should be required to disclose the percentage that a particular flight is on time, and have available the average delay and cancellation rate. Chronically delayed flights should be posted on the carrier's and a DOT website, as well as frequently canceled flights.

It is unlikely that many passengers will want to book flights that are delayed or canceled more than 50 percent of the time, thereby causing the airlines to discontinue such flights and rationalize their schedules, based on reality and truth in scheduling rather than deceptive scheduling.

While the number one cause of delays is air traffic congestion, the *number two cause of delays and cancellations is the airlines' lack of reserve capacity of aircraft and flight crews* which now runs at 1 percent or less. Extreme weather causes less than 5 percent of delays. No system can operate reliably without an adequate reserve capacity, sick pilots or mechanical problems now invariably cause daily avoidable delays and cancellations. Accordingly, *mandating a minimum reserve capacity would be the fastest and cheapest way to improve reliability of the national air transportation system*.

However, there also needs to be a *requirement that deceptively scheduled flights be canceled*. These are flights that are delayed over 80 percent of the time or are frequently canceled (*e.g.*, Over 8–10 percent of the time). As of February 2007 there

were 175 flights that are regularly late over 80 percent of the time, typically for 30–120 minutes. The worst examples of this Schedule Lying include Mesa Air Flight 7174 from Birmingham to Chicago late 100 percent of the time an average of over 2 hours, US Airways flight 154 from Philadelphia to San Francisco late 100 percent of time averaging over an hour, and Comair flight 1435 from Reagan National to JFK (actual flight time less than 25 minutes) late 93 percent of the time an average of 79 minutes.

For economic reasons, some airlines engage in the practice of deceptive scheduling. Since airline deregulation the FAA and airports exercise little if any control over airline flight scheduling. As a result, some busy airports now have many more flights scheduled to depart or land than the airport capacity will allow during certain time periods.

Airlines have an incentive to schedule flights at the most popular times even if they know that the scheduled times cannot be met due to airport capacity and overcrowding. Such practices should be banned as they amount to a fraud on the public and may give airlines willing to engage in such dishonest practices an unfair competitive advantage. (*c.f.*, JetBlue, Express Jet, Mesa and Comair have 8–10 percent of their flights regularly late over 70 percent of the time, while Southwest, Delta, Alaska, Hawaiian, and Aloha are at only 0.0 to 0.2 percent of their flights).

The FAA also should be required to ensure that airlines do not chronically overschedule, particularly at choke-point airports, as such practices have a negative affect on the national air traffic as well as flights originating or terminating at such airports. These airports include Chicago O'Hare, Atlanta Hartsfield, New York LaGuardia, Kennedy and Newark Airports, Los Angeles International, and San Francisco. The current non-system is analogous to having no traffic lights or traffic control rules to control congestion on our Nation's roadways.

The next reform needed is to *provide compensation for passengers for flights canceled by the airline for economic reasons less than 2 hours before flight time*. While the airlines will not admit it, such cancellations are common and amount to breach of contract and fraud. If a flight has so few passengers that the airline wants to cancel it, it should do so at least 2 hours before, so that passengers do not come to the airport unnecessarily, and provide passengers with alternate transportation within an hour of the canceled flight time plus a ticket refund.

Otherwise, the airlines should provide passengers with compensation that is equivalent to normal breach of contract compensation (normally the cost of the covering the service defaulted upon with another provider and sometimes consequential damages) or at least equivalent to bumping compensation, perhaps capped at several thousand dollars. In case of any dispute, it should be presumed that a flight was canceled for economic reasons if there was no ground hold by air traffic control and the flight was less than 30 percent booked.

Passengers, who are *stranded by airline delays and cancellations overnight, away from their home city, should receive ground transportation and overnight accommodations*. Airlines use to provide this as a matter of course, but now many do not or do so only for certain favored passengers. This has led to chronic choke-point airports like O'Hare in Chicago being dubbed "Camp O'Hare" with over 50,000 passengers per year being stranded and cots being set up in the baggage claim areas after midnight during the last high air traffic years (1998–2000).

Inflation Adjustment for Bumping and Lost Baggage

Legislation is also needed for *automatic inflation increases in compensation for bumping* (involuntary denied of boarding of passengers with confirmed reservations due to airline overbooking). The present rule caps cash compensation at \$400 or \$200 and has not been changed or updated for inflation for over 25 years.

The compensation cap for lost or damaged luggage on international flights to or from the U.S. is about \$1,500 (this cap is based on an arcane treaty which provides for a compensation cap based on IMF special drawing rights or SDRs, this compensation cap is now badly outdated.) Under the common law of bailment, airlines would have unlimited liability. While legislation cannot change this treaty, it could mandate excess liability insurance be offered to passengers by airlines flying to or from the United States.

On domestic flights, the U.S. DOT has recently increased lost baggage compensation limit to \$3,000 from \$2,800 under an inflation adjustment rule.

Enforcement

Finally, a *bill of rights for airline passengers needs to include a way for passengers to enforce their rights in a timely and inexpensive way*. This is something totally lacking in the present system. Complaints to airlines or the U.S. DOT are regularly blown off (ACAP gets copies of some of these and a study can easily be done of the

thousands of complaints to the U.S. DOT consumer affairs office that are simply logged for statistical purposes).

ACAP suggests mandating a small claims arbitration process (which could be a private alternate dispute resolution service that uses retired judges, consumer affairs, or experienced arbitrators), as is typical in insurance and securities industry contracts with consumers, with the option for the customer going into local small claims court if the dispute is over a certain amount, like \$1,000. For disputes involving many passengers, and millions of dollars of claims, class actions in state or Federal courts should be authorized, as well as through arbitration. There also needs to be a provision that would require the airline to pay the litigation expenses of the passenger if the resulting decision exceeds a rejected settlement offer. Now, there is no arbitration process, and airlines who are sued in state courts try to get the cases dismissed on jurisdictional grounds.

Conclusion

The above provisions would cover the largest number of complaints of airline passengers, which are Flight Delays and Cancellations and Lost or Mishandled Luggage, as well as their most egregious complaints and abuses of Stranding and Wrongful Imprisonment. These reforms would also enhance and reward honest competition among the airlines and U.S. economic productivity by discouraging abusive scheduling and service practices now causing unnecessary air transportation delays by reducing flight delays and cancellations that now impose unnecessary costs on the overall economy as well as individual passenger inconvenience and hardship.

Specific comments on the legislation recently introduced by Senators Boxer and Snowe, and by Congressperson Thompson of California are contained in Appendix A to this testimony. Thank you for holding this important and timely hearing. I look forward to responding to any questions of the Committee.

APPENDIX A. COMMENTS ON S. 678 AND H.R. 1303—AIRLINE PASSENGERS' BILL OF RIGHTS ACT OF 2007

Overall Comment: Such legislation is necessary and long overdue. It should be comprehensive and address the major complaints of airline passengers which are flight delays and cancellations, mishandled baggage, and the lack of any enforceable rights are for service complaints. Finally, there should be consideration of rights of passengers concerning aviation security measures which have become a major concern since 9/11.

Specific Comments:

S. 678 (by Senators Boxer and Snowe) as introduced February 17, 2007:

Sec. 41781(a)(2) Right to Deplane

The right to deplane should be triggered after 2 hours or less, not three. Most flights are under 2 hours duration. Many passengers can obtain alternate transportation if they are permitted to deplane. Wrongful imprisonment lawsuits have resulted in recovery for unreasonable detention as short as 2 hours. This provision could be used by the airlines to legitimize involuntarily detaining passengers for 3 hours or more, and therefore could be a step backward for passenger rights and could potentially lead to an increase in stranded and involuntarily detained passengers.

H.R. 1303 (Mr. Thompson of California, *et. al*) as introduced March 1, 2007:

Sec. 41782 Standards for air carrier passenger services

(a) This provision would allow for no change in existing procedures for handling passenger complaints, which give air carriers the near absolute power to reject complaints with no effective recourse or remedy for the complaints. Airline procedures generally provide that any pro-consumer policies and practices are not part of the contract for carriage and legally unenforceable, and there is no neutral third party mediation or arbitration for unresolved complaints.

(2) METHODS OF NOTIFICATION—Should also provide for and include direct notification of passengers by telephone or e-mail of flight delays. Airlines now have phone numbers for all passengers and often e-mail for passengers and should be required to directly notify them of delays or cancellations that are known more than 2 hours before flight time. This will prevent unnecessary or untimely travel to, congestion at airports, and general cost and aggravation for all concerned.

(1) RIGHT OF PASSENGERS TO EXIT AN AIRCRAFT—Same comment as under Right to Deplane above.

After section on Chronically Delayed Flights there should be a section for Frequently Cancelled Flights (canceled more than 5–10 percent of the time) that re-

quires such to be discontinued and compensation paid to passengers as in bumping regulations.

Sec. 41783 Procedures for Departure Delays

(a) Should also include permitting deplaning passengers without returning to gate which is often feasible especially where passengers are transported to aircraft by bus.

(2) MEETING—This provision should include representatives of passengers, not just government and industry representatives.

Goal of contingency plans should be “graceful degradation” of national air traffic in weather related, natural, or man made disasters and emergencies, using diversion to pre-designated alternative and secondary airports and enhanced ground transportation. The current system effectively causes national air traffic brownouts and blackouts that take as long as a week to recover from, whenever a major airport is unavailable.

The CHAIRMAN. I thank you very much.
May I recognize Mr. Mitchell?

**STATEMENT OF KEVIN P. MITCHELL, CHAIRMAN,
BUSINESS TRAVEL COALITION**

Mr. MITCHELL. Thank you, Mr. Chairman, members of the Committee, for inviting the Business Travel Coalition to testify before this Committee again, and to provide our views on the subject of airline passenger service.

I’m here representing corporations that purchase millions of dollars in air tickets each year and dispatch millions of travelers on the road each day. Formed in 1994, BTC has consistently advocated the need for improved airline service, and has provided the Congress and DOT with suggestions on how to ensure such service is implemented in the marketplace. However, legislation in this area is not needed, and, in BTC’s view, would make matters worse, in terms of safety margins, flight cancellations, and higher airfares.

These recent unfortunate incidents do not rise to a level of national seriousness to warrant Federal laws governing airline industry customer service. As pointed out earlier, massive delays are unusual. This is not to say, however, that Congress does not have an important role here. Indeed, this hearing is timely in a larger customer-service sense.

Progress, at the beginning of this decade, against airline service commitments was recorded for a few quarters. Then the tragedy of 9/11 and new security requirements struck, followed by SARS, the Iraqi War, sky-high jetfuel prices and \$40 billion in losses. Airlines, press, the DOT, the Congress, consumer groups, we all lost focus on these customer service commitments.

Indeed, it is time for airlines to refocus. Importantly, DOT is already moving on this issue. In addition, the FAA is examining its role in contributing to extended delays. For example, with the confusion created during the New York storm in February by varying interpretations of the regulation concerning ice pellets.

DOT, Congress, passenger groups, and the press are a potent combination, a highly visible bully pulpit to inform consumers, who then make purchasing decisions that drive the market. Reporters and customers pounded JetBlue in the aftermath of its customer-service fiasco. Customers do have choices, the power to effect change. In the case of JetBlue, the operational debacle cost it millions of dollars and tarnished its image. The effectiveness of man-

agement in responding with changes to policies and procedures will determine its future success. The marketplace is, indeed, holding JetBlue accountable.

In addition, in the aftermath of the terrible conditions American Airlines customers endured in December, as noted, the airline implemented new policies and procedures. Legislation, in our view, is not the answer.

One proposal calls for the return of jets to gates after 3 hours. Consider a Friday afternoon scenario at O'Hare. Arriving planes take up most of the gates, 50 jets are lined up, but unable to take off due to worsening weather conditions. At the 3-hour point, like a line of dominoes, the aircraft become paralyzed in a regulatory limbo, with nowhere to go. The impact would ripple through the system. Travelers would be stuck in Chicago for the weekend, those in distant cities would, likewise, be stranded in their aircraft, or because their aircraft is at—are at O'Hare. There is little doubt that such legislation would lead to higher airline staffing, operational costs, and increased business airfares. If you can legislate 3 hours, why not 2 hours? It doesn't make sense.

Another proposal would require compensation to passengers when airlines fail to deliver services, as promised. It is imprudent to mix government-imposed financial incentives and penalties with airline go/no-go decisions and safety judgments.

On February 19, 2005, the number-two engine of a Boeing 747 failed after takeoff from LAX on a flight to Heathrow with 351 passengers onboard. The captain decided to continue anyway, with three engines. Because it was unable to attain normal cruising speeds and altitudes, the aircraft was forced to divert to Manchester, England. Under European Union passenger rights legislation, had the plane returned to LAX, BA would have had to compensate passengers some \$250,000. BA denies the penalty influenced its decision.

A recent BTC survey underscores the safety concern. Of 144 corporate travel managers surveyed, only 10 percent would support a passenger bill of rights in the absence of an ironclad commitment that safety margins would not be decreased.

There are actions the Federal Government can take to improve the experience of the flying public:

One, increase airline competition through Open Skies Agreements and a promotion of new entrants, such as Virgin America. Prevent radical consolidation of the airline industry; the greater the competition, the more influence the customer has in driving airline service improvements.

Number two, invest in new satellite system—a new satellite system for air traffic control to reduce delays and improve system efficiency, especially during times of severe weather systems. Pass FAA reauthorization so that the Government and the industry can head off a real crisis in passenger service.

Three, build more runways, such as at O'Hare.

Four, insist on better decisionmaking on rules promulgated by the FAA to prevent highly confusing and service-degrading circumstances, such as with the pellet—the ice pellet situation.

Five, and finally, require greater DOT enforcement of existing carrier commitments and existing laws and regulations.

In conclusion, while BTC believes that the airlines must do more to reduce delays and minimize customer hardship during delays, we believe that the Federal legislation would prove to be counter-productive and something we cannot support.

Thank you.

[The prepared statement of Mr. Mitchell follows:]

PREPARED STATEMENT OF KEVIN P. MITCHELL, CHAIRMAN,
BUSINESS TRAVEL COALITION

Mr. Chairman and Members of the Committee, thank you for inviting the Business Travel Coalition (BTC) to testify before this Committee again and to today provide our views on the subject of airline passenger service. I am here representing the interests of corporations that purchase billions of dollars of commercial air transportation services, and dispatch millions of travelers each day.

Formed in 1994, BTC has consistently advocated on behalf of business travelers the need for improved airline service and has provided the Congress and U.S. Department of Transportation specific suggestions on how to ensure such improved service in the marketplace. However, Federal legislation in this area is not needed and, in BTC's view, would make matters worse, not better, in terms of reduced safety margins, more flight cancellations and higher airfares.

Background

BTC testified in 1999 against proposed passenger rights legislation. The Coalition believed it was a bad idea then, and believes it still is today. Congressional mandating of customer service standards in any industry represents a dangerous precedent. In the case of the airline industry, such legislation would increase business travel costs, stifle innovation and raise safety issues.

The proximate cause of the legislative initiative in 1999 was a Northwest Airlines' plane and its passengers that had been stuck on the tarmac in Detroit during a horrendous snow storm in January of that year. Investigative reporters at *The Wall Street Journal* later uncovered that it was managerial incompetence manifest in a series of poor decisions that led to the customer service meltdown. That discovery certainly would not have appeased any passenger that was on that plane that day.

Threshold for Legislation

However, like the present day's issue during recent storms in Texas and New York, these unfortunate incidents do not rise to a level of national seriousness to warrant Federal laws governing airline industry customer service. Massive delays are unusual. According to the *Bureau of Transportation Statistics*, in 2006 just 36 out of 7.1 million commercial flights sat on the ground for 5 hours or more.

In vivid contrast, an aviation issue that has reached the threshold of national seriousness, sufficient to warrant Federal legislation, is, by way of example, that of outsourcing aircraft heavy maintenance to overseas contractors with less expertise, virtually no background checks on mechanics and woefully inadequate oversight. It is literally an accident waiting to happen.

The Bully Pulpit

This is not to say that Congress does not have an important role to play. Indeed, this hearing is timely in a much larger airline industry customer service sense. Progress at the beginning of the decade against airline voluntary customer service commitments was recorded for several quarters, but then fell off.

Suddenly in early 2001, a fundamental marketplace shift caught the airlines off guard. Then the tragedy of September 11 and new security requirements struck, followed by SARS, the Iraq war, sky-high jet fuel prices and \$40 billion in losses. Painful restructurings eliminated more than 147,000 airline industry jobs—many were customer-facing. During this period, cutbacks in customer service and passenger amenities were implemented just for basic survival. Airlines, passengers, consumer groups, press and government all lost their focus on the industry customer service commitment.

Indeed, it is time for airlines to refocus on customer service. Importantly, the U.S. Department of Transportation (DOT) is already moving on the issue. Secretary Mary Peters recently issued an *urgent* call for the Department's Inspector General to review the current state of airline customer service and to develop proposals to address any problems. In addition, the FAA is examining its own role in contributing to extended delays. For example, the confusion created during the New York storm by the varying interpretations of the FAA regulation concerning ice pellets.

DOT, Congress, passenger groups and the press are a potent combination, a highly visible bully pulpit to inform consumers who in turn make purchasing decisions that drive the market. Reporters and customers, for example, pounded JetBlue in the aftermath of its customer service fiasco.

"Thousands of fuming JetBlue passengers were grounded this weekend . . ." said *The New York Post*. "JetBlue red-faced over strandings at JFK" read a *Star-Ledger* headline. "In today's society we as citizens/customers have the opportunity to disrupt a company's reputation," stated the founder of *JetBlueSucks.net*. "The cancellations raise new questions about whether JetBlue's management is equal to its ambitions," exclaimed *The New York Times*.

Marketplace Solutions

In the marketplace for commercial airline services, customers do have choices and the power to effect change. In the case of JetBlue, the operational debacle cost it millions of dollars in near-term lost revenue and higher costs, and badly tarnished its superior customer service image. The effectiveness of management in responding with changes to policies and procedures will determine its future success. The marketplace is holding JetBlue accountable, and like competitors before them, the pounding has led to positive change with a passenger bill of rights and a compensation plan for inconvenienced customers.

JetBlue's CEO David Neeleman is a smart, world-class entrepreneur and an airline industry icon. He will be driven to make sensible adjustments for the benefit of his customers and shareholders. In the immediate aftermath of the terrible conditions American Airlines' customers endured on December 29, 2006, during a storm that paralyzed air traffic in Texas, the airline implemented new policies and procedures. The infamous January 1999 debacle at Detroit, during a horrendous snow storm, led to structural changes at Northwest Airlines and the justification of a new runway at Detroit Metro Airport.

The Problem with a Legislative Solution

Legislation is not the answer. One proposal calls for the return of jets to gates after 3 hours. Consider this Friday afternoon scenario at O'Hare: arriving planes take up most of the gates, 50 jets are lined up, but unable to take off due to deteriorating weather. At the three-hour point, like a line of dominos, the aircraft become paralyzed in regulatory limbo with nowhere to go. The impact would ripple through the system. Travelers would be stuck in Chicago for the weekend; those in distant cities would likewise be stranded as their aircraft are at O'Hare. There is little doubt that such legislation would lead to higher airline staffing and operational costs, and increased business airfares.

Another proposal would require compensation to passengers when airlines fail to deliver services as promised. This may be well intentioned, but it is an example of a dangerous idea with all manner of potential unintended consequences. It is imprudent to mix government-imposed financial incentives and penalties with airline operations, go, no-go decisions and safety judgments.

On February 19, 2005, the No. 2 engine of a Boeing 747 failed after takeoff from LAX on a flight to Heathrow with 351 passengers onboard. The captain decided to continue anyway with 3 engines. Because it was unable to attain normal cruising speeds and altitudes, the aircraft was forced to divert to Manchester, England. Under European Union passenger rights legislation, had the plane returned to LAX, BA would have had to compensate passengers some \$250,000. BA denies that the penalty influenced its go, no-go decision.

A BTC survey underscores the safety concern. Of 144 corporate travel managers recently surveyed, only 10 percent would support a Passenger Bill of Rights in the absence of an ironclad guarantee that safety margins would not be decreased. There are safety concerns as well as questions regarding the efficacy of Congressional intervention. Consider this representative comment from survey participants:

"Not to minimize this recent event, but let's focus on the millions of airline flights across America and the world that take place every day without incident. Do we really need the government legislating "common sense" customer service. No doubt, JetBlue will handle the bad publicity and attempt to appease those unfortunate passengers. No amount of vouchers or free tickets can undo their intolerable experience. How about we take a business approach and let the marketplace decide what retribution JetBlue should suffer, if any."

The Coalition has never adopted the premise of ideological purists who insist the marketplace will solve all of the travel industry's ills. There's a place for regulation. It's just that it's not in this arena, and not at this point.

As aviation attorney Susan Jollie states, “The questions I wished politicians asked themselves are, ‘Is there a significant persistent market failure that can only be remedied by government involvement?’ And perhaps more importantly, ‘Why do I believe that government personnel would have the necessary background, intelligence, integrity and dedication to make better decisions than those in industry whose role they would be taking over?’”

Steps Government Can Take to Improve the Flying Experience

There are actions the Federal Government can take to improve the experience of the flying public.

1. Increase airline competition through Open Skies Agreements and the promotion of new entrants such as Virgin America. Prevent radical consolidation of the airline industry. The greater the level of competition, the more influence the consumer has in driving the market and airline service improvements.
2. Invest in a new satellite system for air traffic control to reduce delays and improve system efficiency, especially during times of severe weather systems. Pass FAA reauthorization so that the government and the industry can head off a real crisis in passenger service.
3. Build more runways such as the Chicago O'Hare modernization, which BTC supported.
4. Insist on better, more inclusive decisionmaking on rules promulgated by the FAA to prevent highly confusing and service degrading circumstances such as the ice pellet regulation.
5. Require greater DOT enforcement of existing carrier commitments and existing regulations and laws.

While BTC believes that the airlines can and must do more to reduce delays and minimize consumer hardship during delays, we believe that Federal customer service legislation would prove to be counterproductive and thus something BTC cannot support.

The CHAIRMAN. Thank you very much, Mr. Mitchell.
May I now recognize Ms. Hanni?

STATEMENT OF KATE HANNI, EXECUTIVE DIRECTOR, SPOKESPERSON, AND FOUNDER, COALITION FOR AIRLINE PASSENGERS' BILL OF RIGHTS

Ms. HANNI. Thank you, Mr. Chairman.

My name is Kate Hanni, and, on behalf of the Coalition for an Airline Passengers' Bill of Rights, I'd like to thank the Committee—Commerce Committee Chairman Inouye, Aviation Subcommittee Chairman Rockefeller, Senator Boxer, and Senator Olympia Snowe, and all the other members of the Committee, for the opportunity to address you today.

I am here in part because of the cruel and inhumane manner in which my family and thousands of other stranded passengers were treated on several American Airlines flights during the holiday season of 2006, and, most importantly, our mission to ensure that no other airline passenger has to endure our horrific ordeal ever again.

First, I want to offer a brief synopsis of what happened to us on December 29, 2006, and then I will inform the distinguished members of this Committee why we have formed this coalition, our mission, and what we hope Congress will do in order to safeguard the flying public.

We were headed to Point Clear, Alabama, from San Francisco, for a needed family holiday vacation which started off much like our other trips, since my husband and I are frequent business flyers, but what should have been a short trip turned into an odyssey that lasted more than 57 hours and almost 3 days.

The most desperate hours of our ordeal—9, to be precise—were spent stranded on the tarmac of Austin International Airport with no food, no potable water, overflowing toilets, and anger toward American Airlines for turning what was supposed to be a holiday vacation into a chaotic and traumatic experience for myself, my husband, and both of my children, one which I am certain the hundreds of passengers aboard our plane will never forget.

During those 9 exasperating hours, we were besieged with an overwhelming sense of fear and desperation, not knowing when, and if, we would ever be able to get out of the aircraft. Our pilot did the best he could under the circumstances. He reminded us to be patient. But after 9 hours of being held against your will in an airplane, knowing full well that we could have spent that time at least in the airport, we could no longer remain calm.

We had just had to endure the foul stench of overflowing toilets for 9 hours, as our ventilation was turned off. Some people with medical conditions, such as diabetes, ran out of medication, others had no water with which to take their medications. We were, and remain, extremely angry and disappointed that American Airlines—at American Airlines for having failed miserably at providing its passengers the very basic level of customer service during and after our horrific experience.

According to thousands of e-mails—and I have my left hand on the 15,000 e-mails that I've received from flyers who have not filed their complaints with the Department of Transportation—

Two days later, when we finally arrived at our destination, I contacted my Congressman's office asking for help. I had never contacted him before. I explained that we were trying to reach American Airlines to finally receive some explanation as to how they can hold people on an aircraft for so long, but have received no response from them. Our e-mails were kicked back, and our telephone calls were rebuked. They told us, "Do not blame us for the weather."

Congressman Mike Thompson wrote a letter to Gerard Arpey, President of American Airlines, on our behalf. There was no response to that letter, other than a perforated postcard several weeks later, stating that they had received our correspondence. It actually said, "Dear Valued Customer, We have received your correspondence." But it was not a direct response to our letter or our requests.

That was the tipping point for me. I had had enough. As I began to contact the other passengers on our flight through blogs, which I had never done before, and through a Google search, all of the other stranded flights in Austin began to appear. I realized the problem was much bigger than just three or four American Airlines planes that we thought had been stranded. My husband started a blog and a petition, forming the Coalition for Airline Passengers' Bill of Rights.

Since forming the Coalition, there has been an epidemic number of strandings just this year alone. Similar situations, different airlines, different airports, but with the same level of frustration and anger against an airline industry that puts the well-being and welfare of its passengers last, and is much more concerned with their own bottom line.

Members of the Committee, this is simply unacceptable. We all know about the JetBlue Valentine's Day strandings. One of the passengers, Michael Skolnik, a film producer trying to get to an important meeting in Los Angeles, was not only stranded on one jet for 11 hours, but, when they finally deplaned him, shell-shocked and dumbfounded, he happened to have his carry-on baggage only, so they said, "If you'll just run to get on this other flight, we can get you to Los Angeles." He then sat for another 6 and a half hours on a second plane on the tarmac at JFK. Seventeen and a half hours in two JetBlue planes in one 24-hour period, with no water, adequate food, adequate ventilation. I don't know how a person can tolerate that.

Then United Airlines stranded people at Chicago O'Hare for 8 hours in the middle of the night. Then you have Philadelphia and JFK, 2 weeks later. One particular passenger, who's sitting next to me and will testify, Rahul Chandron, was a second-time victim, having been on the Northwest Airlines incident in Detroit in 1999. The airlines say it's improbable. Evidently not.

There's another crisis to address, and it happened in Cheyenne and in Scott's Bluff, Nebraska. It's abandonment by the airlines. Entire planeloads of diverted passengers were dropped off in an airport, not their destination, and left there with no resources. Roger Barbour was trying to get to his wedding, when he was dropped in Cheyenne by United Airlines. It ended up costing him \$3,000 to get home. I just received the video of the planes leaving the airport and leaving all the passengers last week.

But that's not even close to being the full story. Airline and government agencies intentionally fail to maintain statistics for flights that never reach their destinations. So, if an airline leaves the gate, but never takes off, neither the airlines nor the government keep statistics about those flights. And I'm actually referring more to the strandings of American Airlines, where we were already departed from the airport and put down in Austin. And I actually have the data log from our American Airlines flight 1348 that doesn't show that we ever landed in Austin; it shows not any time on the tarmac, and it shows at no point when we were—when we replaned and left that airport. There's just a single flight cancellation in the Government's book. That means that there are no time-on-the-tarmac statistics kept for the American Airlines December 29 diversions, JetBlue and other flights that sat on the Newark, New Jersey, tarmac for 11 hours in February, nor for the more recent flights that were held for over 9 hours at JFK in March. To the Secretary of Transportation, it's as if they never happened.

We found out that, on December 29, 2006, due to thunderstorms over Dallas/Fort Worth area, in addition to our flight, 71 other flights were diverted from Dallas/Fort Worth to land at other regional airports. Those flights held 5,000 passengers.

Except for the people trapped on those runways, like us and other members of our coalition on other flights, no one knows exactly how long all of those flights were held, because there are no statistics kept. The reality is, the airlines, conveniently, aren't required to report the amount of time those planes sat on those runways.

Why is the failure to maintain these statistics so important? The problem may be orders-of-magnitude greater than delay statistics currently maintained by the Government; but, without valid statistics, nobody knows the full extent of the problem, including our lawmakers.

To get some idea, we can look at one statistic that is kept. Last year, 16,186 flights were diverted to other airports. Assuming at least 100 passengers per flight, that means over 1.6 million Americans may have experienced circumstances similar to the December 29, 2006, Austin debacle. And those numbers aren't apparent to us anywhere. We can't find anywhere that statistically records those.

That is why, members of the Committee, we have turned anger into advocacy. That is one of the few bright spots of our ordeal and the reason why I'm here speaking in front of you today.

It is with a great deal of determination that we have formed the Coalition for Airline Passengers' Bill of Rights. In just 3 short months, we have become the fastest-growing airline passengers organization in the country. Our membership is 15,000, and continues to expand. We know the airlines wish we would just go away, but there's one key factor the airlines have discounted, and that is the will and anger of airline passengers that are saying, "Enough is enough."

This is why we are here today, urging members of this distinguished Committee and Congress to adopt the Airline Passengers' Bill of Rights, as written by Barbara Boxer and Olympia Snowe. And I'm very proud that it's a bipartisan piece of legislation that's been brought forward. I am very impressed with these ladies for bringing it, and so is the entire coalition.

Congress must now step up, and—once again, in the latest annual airline quality rating report, Congress must now step up and use FAA reauthorization legislation to ensure that airlines make passengers' rights a top priority, once and for all. The last thing that we should do is provide more giveaways to the airlines and less accountability to consumers and Congress, while airlines continue to strand passengers in communities all across the country.

In addition, I understand that the airlines plan for reauthorization would wrongly slash funds by \$600 million, jeopardizing efforts to modernize our air traffic control system. Safety and well-being should be our focus, not tax breaks. The flying public needs a voice and legal recourse so that we can stop these horrific stories experienced by thousands of stranded passengers from happening, once and for all. For the last 8 years and longer, the airlines have had the opportunity to make good on their promises, their commitments, to improve customer service and ensure basic human rights for passengers. It's time for Congress to ensure that airlines make passengers their top priority.

Thank you, once again, for the opportunity to address members of the Committee and for allowing me to share our story on behalf of the Coalition for an Airline Passengers' Bill of Rights. I am happy to answer any questions that you may have.

[The prepared statement of Ms. Hanni follows:]

PREPARED STATEMENT OF KATE HANNI, EXECUTIVE DIRECTOR, SPOKESPERSON, AND
FOUNDER, COALITION FOR AIRLINE PASSENGERS' BILL OF RIGHTS

My name is Kate Hanni and on behalf of the Coalition for Airline Passenger's Bill of Rights, I'd like to thank Commerce Committee Chairman Inouye, Aviation Subcommittee Chairman Rockefeller, Senator Boxer and members of the Committee for the opportunity to address you today.

I am here in part because of the cruel and inhumane manner in which my family and thousands of other stranded passengers were treated on several American Airlines flights during the holiday season of 2006 and more importantly, our mission to ensure that no other airline passenger has to endure our horrific ordeal ever again. First, I want to offer a brief synopsis of what happened to us on December 28, 2006 and then I will inform the distinguished members of this Committee why we have formed this Coalition, our mission and what we hope Congress would do in order to safeguard the flying public.

We were headed to Point Clear, Alabama from San Francisco for a needed family holiday vacation, which started off much like our other trips since my husband and I are frequent business flyers, but what should have been a short trip turned into an odyssey that lasted more than 57 hours and almost 3 days. The most desperate hours of our ordeal—9 to be precise—were spent stranded on the tarmac of Austin International Airport with no food, no running water, overflowing toilets and anger toward American Airlines for turning what was supposed to be a holiday vacation into a chaotic and traumatic experience—one which I am certain the hundreds of passengers aboard our plane will never forget.

During those 9 exasperating hours, we were besieged by an overwhelming sense of fear and desperation, not knowing when and if we would ever be able to get out of the aircraft. Our pilot did the best he could under the circumstances, he reminded us to be patient, but after 9 hours of being held against your will in an airplane—knowing full well that we could have spent that time at least at the airport—we could no longer remain calm. We had just had to endure the fowl stench of overflowed toilets for 9 hours as our ventilation was turned off. Some people with medical conditions such as diabetes ran out of medication, and others had no water with which to take theirs.

We were and remain extremely angry and disappointed at American Airlines for having failed miserably at providing its passengers the very basic level of customer service during and after our horrific experience. According to thousands of e-mails and phone calls I've received since then, the same thing was happening in several other airports around the region.

Two days later when we finally arrived at our destination, I contacted my Congressman's office asking for help. I explained that we were trying to reach American Airlines to finally receive some explanation as to how they can hold people on an aircraft for so long, but had received no response. Congressman Mike Thompson wrote a letter to Gerald Arpey, President of American Airlines, on our behalf. There was no response to that letter, other than a perforated post card several weeks later stating they had received our correspondence. That was the tipping point for me—I had had enough.

As I began to contact the other passengers on our flight and other stranded flights in Austin, I realized the problem was much bigger than just the 3 or 4 American Airlines planes that we thought had been stranded. My husband started a blog and a petition, forming the Coalition for Airline Passengers' Bill of Rights. Since forming the Coalition, there has been an epidemic number of similar strandings just this year alone—similar situations, different airlines, different airports but with the same level of frustration and anger against an airline industry that puts the well-being and welfare of its passengers last and is much more concerned with their own bottom line.

Members of the Committee—this is simply unacceptable!!

We all know about the JebBlue Valentine's Day strandings. One of the passengers, Michael Skolnik, a film producer trying to get to an important meeting in Los Angeles, was not only stranded on one jet for 11 hours, but when they finally deplaned them—shell-shocked and dumbfounded—he then sat for another 6.5 hours on another JebBlue aircraft stuck to the tarmac, still trying to get to Los Angeles. 17.5 hours in two JebBlue planes in 1 day?

Then United Airlines stranded people at Chicago O'Hare for 8 hours in the middle of the night.

Then, you have Philly and JFK strandings. One particular passenger, Rahul Chandron, was a second time victim having been on the Northwest Airlines incident in Detroit in 1999.

The airlines say it's improbable . . . evidently not.

There is another crisis to address and it happened in Cheyenne and Scotts Bluff, Nebraska. It's abandonment by the airlines. Entire plane loads of diverted passengers were dropped off at an airport, not their destination, and left there with no resources. Roger Barbour was trying to get to his wedding when he was dropped in Cheyenne by United Airlines. It ended up costing him \$3,000.00 to get home.

But that's not even close to being the full story. Airline and government agencies intentionally fail to maintain statistics for flights that never reach their destinations. So, if an airplane leaves the gate but never takes off, neither the airlines nor the government keep statistics about those flights—they're just a single flight cancellation in the government's book. That means there are no "time on the tarmac" statistics kept for the American Airlines December 29 diversions, JebBlue and other flights that sat on the Newark, NJ tarmac for eleven hours in February, nor for the more recent flights that were held for over 9 hours at JFK in March. To the Secretary of Transportation, it is as if they never happened!

We found out that on December 28, 2006, due to thunderstorms over the Dallas/Fort Worth area, in addition to our flight, 70 other flights were diverted from DFW to land at other regional airports. Except for the people trapped on those runways like us and other members of our Coalition on other flights—no one knows exactly how long all of those flights were held because there are no statistics kept. The reality is that airlines conveniently aren't required to report the amount of time those planes sat on those runways.

Why is the failure to maintain these statistics so important? The problem may be orders of magnitude greater than delay statistics currently maintained by the government, but without valid statistics nobody knows the full extent of the problem, including our lawmakers. To get some idea, we can look to one statistic that is kept. Last year, 16,186 flights¹ were diverted to other airports. Assuming at least 100 passengers per flight, that means over 1.6 million Americans may have experienced circumstances similar to the December 28, 2006 Austin debacle. And those numbers aren't reported anywhere!

That is why, Members of the Committee—we *have turned anger into advocacy*—that is one of the few bright spots of our ordeal and the reason why I am here speaking in front of you today.

It is with a great deal of determination that we have formed the *Coalition for Airline Passengers' Bill of Rights*. In just three short months, we have become the fastest growing airline passenger's organization in the country and our membership of 15,000 continues to expand.

I'm here to urge Members of this Committee, the Senate and Congress to enact legislation of an Airline Passengers' Bill of Rights that holds airlines accountable to their customers, while providing the very basic level of customer service.

The Airline Passengers' Bill of Rights is *not* about:

This is *not* about reasonable and inevitable flight delays or route diversions due to weather conditions.

This is *not* about delays for mechanical problems that could affect the safety of a flight.

This is *not* about putting unreasonable pressures on airline professionals that would compromise passenger safety in any way.

This is *not* about adding unreasonable financial burden to the airline industry. The focus of our Coalition *is* about:

- Passengers being held as veritable hostages and the whim and convenience of the airlines due to completely controllable events and airline practices.
- Passengers having the right to be returned to the gate after a reasonable amount of time.
- Passengers on flights being allowed to deplane to make travel arrangements.
- Passengers being provided basic services such as food, clean water and toilet facilities when passengers must be held on the plane for valid safety reasons.
- Airlines ending the practice of holding passengers hostage in airplanes after pushing back from the gate, with full knowledge . . . to preserve "on-time" status.
- An industry with so few rules and such poor oversight by so many governmental agencies that even in the face of epidemic strandings and reports that point to a continued and massive decline in customer service, refuses to police themselves and take necessary actions to correct their mistakes.

¹ Source: http://www.transtats.bts.gov/HomeDrillChart_Month.asp?Sel_Year=2006&Arr_Del=1&Sel_Carrier=000&Sel_Airport=000&URL_SelectYear=2007&URL_SelectMonth=1.

- Passing legislation for controllable events that the airlines in the past have acknowledged exist, yet have failed to adopt.

We know the airlines wish we would just go away. But there's one key factor the airlines have discounted and that is the will and anger of airline passengers that are saying: Enough is Enough!

This is why we are here today, urging Members of this distinguished Committee and Congress to adopt the Airline Passenger's Bill of Rights and not let the airlines off the hook once again with their empty promises. After years of broken promises and declining customer service—as we saw once again in the latest Annual Airline Quality Rating Report—Congress must now step up and use FAA reauthorization legislation to ensure that airlines make passengers' rights a top priority once and for all. The last thing that we should do is provide more giveaways to the airlines and less accountability to consumers and Congress while airlines continue to strand passengers in communities all across the country. In addition, I understand that the airlines' plan for reauthorization would wrongly slash funds by \$600 million, jeopardizing efforts to modernize our air traffic control system. Safety and well-being should be our focuses, not tax breaks.

The flying public needs a voice and legal recourse so that we can stop these horrific stories, experienced by thousands of stranded passengers, from happening once and for all. For the last 8 years and longer, the airlines have had the opportunity to make good on their promises to improve customer service and ensure basic rights for passengers. It's time for Congress to ensure that airlines make passengers their top priority.

Thank you once again for the opportunity to address members of the Committee and for allowing me to share our story on behalf of the Coalition for an Airline Passenger's Bill of Rights.

* * * * *

Below is a detailed account of the 9 hours of sheer frustration and exasperation endured by our family and hundreds of other passengers on American Airlines flight 1348 on the tarmac of Austin International Airport.

3 AM Dec. 29th my family left our home in Napa, CA for the San Francisco airport. We travel a lot, but hadn't been all together for a long time and this was to be a restorative vacation that my husband negotiated in exchange for doing wine programs at the Marriot Grand Hotel in Point Clear, Alabama. It was my first trip since being brutally assaulted in a vacant home in Napa in June of 2006.

5 AM. We arrived at the airport for our 6:30 a.m. departure, scheduled to land in DFW at 11:30 a.m., where we would catch our connecting flight and be in Mobile, AL by 3 p.m. Wouldn't that have been nice?

From approximately 5:30 until 6:15 a.m. they moved us from one gate to another, to another 3 gates.

We finally boarded at the third gate at 6:30 a.m. There had been a mechanical problem so we were subject to a short delay. The flight was uneventful until we got to DFW airspace. The pilot came on and said that there were some "Fingers of weather" rolling through Dallas and that we would be able to get there, but would have to divert to Austin briefly to wait out the "Wave/Finger of weather currently hitting DFW." We put down in Austin sometime around 12 p.m. We pulled into a parking lot type situation and were first in line and closest to the terminal so we could see the gates and traffic as it came and went.

It was a sunny landing, the weather was clear in Austin.

Hour one: Pilot says still awaiting clearing of weather. Passengers restless and nervous about connecting flights, but still okay.

Hour two: Pilot still giving us 15 minute updates and telling us he's sure we'll take off, but weather still not clear and heavy traffic in the sky preventing take off. People becoming more restless. Several people who live in Austin and have weddings, funerals, parents' deaths to attend to are now upset and want off the plane. Pilot says he'll ask for a bus to come get some folks off, but accompanies that with a threat "if you deplane you are on your own, you cannot get back on, you have no guarantee of when you will get your luggage."

Two and 1/2 hours: He gets clearance to take off, but he decides it's not safe, he can see an impending thunder head and says we must wait 5–10 minutes for it to clear. It blows through, but he loses clearance to take off. People are getting angry and calling AA Customer Service to find out about their connecting flights. AA states they will surely make their connections, just stay put and that all flights have been delayed out of DFW, not canceled.

Three hours: Pilot says a bus is coming for some passengers if would we be so kind as to allow the passengers who are disabled, elderly and folks with small children to deplane first. Again he accompanies it with a threat of losing your luggage,

etc. We don't try to deplane at this point as my kids are older and the bus only holds 15 people. People storm the back of the plane. We see the people with the kids, the elderly and disabled return to their seats but there are a few less people onboard. That is the last bus . . .

Three and 1/2 hours: Flight isn't going to fly. Pilot informs us he is waiting now for a gate and has made a request. Many planes have gathered next to us in the parking lot. All of them originated in California—all American Airlines. None get gates. The pilot opens the cockpit door and invites us to speak to him in the front if we want to.

Hour 4: People are very frustrated, hungry, angry, restless and needing their medications.

Hour 5: The toilets begin to stink a little, the pilot is still telling us he has requested busses to get us off, requested a gate, requested food and beverages be brought to the plane. None arrives.

Hour 6: The stewardess passes out a bag of pretzels and water from the bathroom sinks in plastic cups. A woman has run out of diapers and is making one out of a t-shirt. We have kids screaming and running up and down the aisles and people are fed up.

Hour 7: The toilets really stink, the pilot lets us know he is still requesting and being promised busses, to deplane us, bring food and beverages and to empty the toilets. He is angry they aren't giving us a gate and tells us so. He is also angry they aren't bringing us food.

Hour 8: There is another onset of thunder and lightning and suddenly a transformer is hit and all the lights go out around us. I can see a man flashing SOS signs out the window of his plane, I see people out on the tarmac walking their dogs, I see an ambulance and police car circling a plane. At this point I'm totally freaked out. I go to the front of the plane. The pilot is exiting the bathroom and I want to enter it. He holds the door shut and says enter at your own risk. I was already aware the rear toilets weren't usable so I entered at my own risk. The smell was intoxicating in a bad way. I could hardly stand it. I exit the bathroom and there is a crowd around the cockpit. I overhear a pilot from an adjacent aircraft state that a dog has "defecated" all over some passengers and that a woman is now throwing up and the air quality onboard has deteriorated to an inexplicable extreme. He was summarily told to stop asking for a gate. We could see available gates, but we weren't being allowed to go to them. I then see Hazmat going to a plane and the police entering another plane. An ambulance and paramedics have entered another aircraft. All were denied gates. Feeling so much anxiety that I was having chest tightness, I asked the pilot whether if I were to have a medical emergency would they allow him a gate. He said no, they will send out an ambulance to get you like they are doing over there. I now know that flight 534 on our tarmac had a diabetic paraplegic who was going into shock. They tried to treat him onboard but couldn't, but when they tried to remove him on the tarmac, the passengers began to revolt. At that point they asked his brother to declare an entire onboard emergency. He did and they were allowed a gate. They were the only plane that evening allowed to a gate prior to the restaurants closing in the terminal.

9 Hours: Our pilot again says he is not being allowed a gate. He says he's talking to the number one and number two managers at the airport and the number one and number two managers at the airlines and being rejected. The rear of our plane was beginning to get very noisy. People were angry and trying very hard not to yell, they walked to the front of the plane and talked to the pilot. There was one particular gentleman that wasn't going to take it any more. He went to the front of the plane and had a heart to heart with the pilot. Voices were raised. At that point the pilot came on and said that he felt that it was no longer safe to hold the plane and that he may lose his job, but was taking the plane in anyway. He turned out the lights in the cabin, we applauded, he shut the cockpit door and began to move at a snails pace since he didn't have the appropriate guidance and clearance to pull in. It appeared he was pulling toward the path of an incoming jet. It was very scary. He made a series of U-Turns and pulled up behind another jet and waited until they backed away from the jet way. They did and he pulled forward. It was another 15 minutes or so before the jet way moved into position for us to deplane.

The pilot, Jesse Fedoro, told us they will get our bags off for us, so we should go to Baggage Claim 3 and wait there for our bags. As we deplaned it was like aliens coming off of a spacecraft on a different planet. We were shell-shocked. You could see it in everyone's face. The restaurants had closed 30 minutes earlier so we couldn't even buy a meal. We went down to baggage claim and there were the media, *The Dallas Morning News*, CBS Channel 42 and others. I was interviewed by CBS and pointed out that the arrivals board didn't have our flight mentioned. My kids were tired, hungry and angry. My youngest went to sleep on the tile floor

in baggage claim. My oldest bought Doritos and sodas for sustenance. We waited 2.5 hours for our bags and they never arrived. There were now a sea of bags and an even larger sea of people. We asked a security guard who was standing next to the baggage claim about the bags. She said, "Oh, they decided 2 hours ago not to remove the bags, just come back in the morning and 'resume' your flight." "Resume?" You mean the flight isn't over? How do we get back in the airport without boarding documents?

We went in the middle of the night to Waffle House and got a hotel room. We returned the next day to 700 of our new best friends at the airport trying to get in and couldn't. I bought a copy of *The Dallas Morning News* which had our flight on the front page. Good thing. I was able to tip the curbside guy and get a dummied up boarding pass, both of which had different times on them. We made it to the gate and our crew was there. They said our flight wasn't going to fly, so we went standby on another flight. They gave no explanation for why it didn't fly. We took off from Austin and headed for Dallas, our baggage still in Austin. We were upset about that. Being in the same clothes for 2 days and counting, I wanted my bags. We got to Dallas and as we landed the pilots said if there is a flight at a gate going to where you are going, then get to it. We had called the night before and had confirmed that we "should" be on the flight since we didn't make the night before. We got clear across the DFW airport and the gate agent said, "I have good news Mrs. Hanni, your bags are on the plane. But I have bad news, Mrs. Hanni, you are not." I looked at the pilot armed with *The Dallas Morning News* and said, "You have no idea what we've been through here." He said, "Unless you are the Queen of England, you aren't getting on this plane." I asked him repeatedly to remove our bags and they declined. When we complained, they said "don't blame us for the weather." They said that they were even removing people from the plane with "confirmed" seats against their will due to a baggage overage. We asked for a voucher for the hotel and the gate agent said, "Don't blame us for the weather."

We spent the second night in Dallas, and contacted AA again. They said we had confirmed seats to get to Mobile the next day. We returned and did make our flight to Mobile. Our bags were there waiting for us. When we did get to our hotel, they had given our rooms to someone else, thinking we weren't going to arrive. My husband had lost the vacation portion of the trip for him, but had to complete the work over the next 4 days as committed.

57 hours in total. Enough is enough!

Azusa, CA, February 9, 2007

Hon. MIKE THOMPSON,
First District of California
Washington, DC.

RE: A.A. FLIGHT #2412 (KNOWN AS THE DOG POOPED ON PASSENGER'S FLIGHT)
STRANDED IN AUSTIN

Flight 2412 left LAX at 6:30 a.m. to arrive in DFW at 11:40 a.m. After circling DFW for 40 min. due to weather we were diverted to Austin for refueling and to wait clearance back to DFW. According to cell phone records upon arrival at Austin tarmac time was 12:32 p.m. There were several other planes to our right and left. The weather upon arrival was fair no severe thunder or lighting storms. The captain came on in intervals telling us that due to storms back at DFW and current weather conditions he would have to wait for clearance. We were aware of other planes taking off and in fact 2 AA planes to our right did finally depart. During the time on the plane they had run out of *snack boxes, sodas, and water*. You could drink the water from the bathroom tap but as the toilets were getting full to the point that you couldn't flush them as the contents had no where to go!

Three major incidents on my flight were: 1. Back at DFW my daughter who has an Autistic 2 yr. old was driving around the airport wondering where I was. Finally after a phone call from me she parked went to the AA ticket counter to ask for information which was rudely told "Its the weather haven't you been watching TV?" to which she replied she had been circling the airport. When ask when the flight would arrive she was told it the weather. The customer service was horrible. 2. I had a woman on my flight that had recently had back/hip surgery. Upon taking her pain medication with no food she vomited. She asks the stewardess to take the bag and dispose of it and her reply was we have no *trash bags* you'll have to hold on to it. 3. There was a small lap dog who had *doggie poop* on the seat and the owner upon being given napkins for the passenger to clean up the mess she also was told to hold on to the mess as there were no *trash bags*. Not only was the smell *horrific* and people were also getting sick but the Captain announced to the pilots of the

other planes the *truth*. . . . We just had a dog *s-t* and our cabin air has just gone to *h-l*. According to my phone records at somewhere between 5:23 and 6:03 p.m. we knew we were not going to be able to get to DFW. At that time I had my daughter look for lodging as well as a flight out the next day. We were told by the crew that if we left the plane we would be responsible for finding our way to our final destination and that our luggage would remain on the plane. We did have a few Austin bound only passengers allowed off after a 1 hour plus wait for the 15 person van. *If* the weather was the issue and yes there was a thunder/lighting storm *but* it did not last the entire length we sat on the tarmac, and if *safety* was a concern of the airline as it should be (we were told that is why we couldn't taxi to the terminal *if* a gate became available *safety* for the ground crew as well) *why* were people let off the plane next to us to *walk there dogs on the tarmac*! We were told due to certain regulations the crew would had to get off the plane and suddenly a gate became available. We deplaned 9:04 p.m.

Upon exiting we were told to go to a certain gate to get information which no one was there so we were directed to the ticket counter where it was also a *chaotic mess*. We were issued a piece of paper and told make you own arrangements as our flights are *booked* and *we can't help*. Luckily my daughter had called and we were able to get a *distressed passenger rate* at the Austin Hilton. (How ironic that a hotel had a distressed passenger program) I passed the phone number around to other passengers so they didn't have to sleep in a closed airport with no restaurants open and empty vending machines BUT working bathrooms. This was all out of our pocket there were no *vouchers* issued for *anything*. Upon my arrival at the airport the next day to my dismay my flight 1250 which was scheduled to leave at 6:40 was delayed not due to weather but they couldn't find a flight crew!!

SHELIA PFISTER.

Business Wire—January 17, 2007

ALLIED PILOTS ASSOCIATION OUTRAGED THAT EXECUTIVE BONUSES COULD MATCH
OR EXCEED AMERICAN AIRLINES' 2006 NET PROFIT

"Aren't Bonuses Normally Paid for a Job Well Done?"

Fort Worth, Texas—The Allied Pilots Association, collective bargaining agent for the 12,000 pilots of American Airlines (NYSE:AMR), expressed its outrage over executive bonuses scheduled for payout in April that could match or even exceed the airline's Fiscal Year 2006 net profit of \$231 million announced today by parent company AMR Corp.

Based on yesterday's closing price of \$40.23 per share for AMR stock, the April bonuses will total some \$218 million. The exact amount of executive bonuses depends on the price of AMR stock on April 18. A disproportionate share of those payouts will go to a select group of around 50 senior executives.

"It's clear that American Airlines' financial performance has improved substantially, thanks in large measure to the deep sacrifices by our pilots and other employees beginning in 2003," said Captain Ralph Hunter, APA President. "The \$1.1 billion improvement in AMR's results would not have been possible without the \$1.6 billion in annual concessions agreed to by AA non-management employees, who are the real heroes behind American's return to profitability. While line employees are still carrying the burden of these massive cuts in pay and benefits, it is insulting for senior managers to be receiving a windfall that may equal or exceed all of our airline's earnings in 2006.

"It is particularly egregious to pay large bonuses when our airline has been experiencing such serious operational problems. What we have today is a small set of underperforming managers whose personal financial recovery is out of line with American's troubled performance in the field. Aren't bonuses normally paid for a job well done?"

Hunter cited the widely publicized incidents that occurred on Dec. 29, 2006—such as American Airlines Flight 1348, which sat on the tarmac in Austin, Texas for some 8 hours with no food or water and overflowing toilets before the Captain elected to taxi to the terminal, despite on-duty managers' refusal to provide a gate—as symptomatic of a management team more concerned with its compensation than with improving the airline's lagging operational performance. According to an article last week in *The Wall Street Journal* about this and similar incidents aboard various American Airlines flights that day, "This wasn't a story about the 'perfect storm,' but about corporate cultures that don't put customer service first."

According to Hunter, when APA contacted management to ask how it planned to prevent such operational miscues in the future, *management justified its performance by noting that no one was hurt on Dec. 29.*

"Safe transportation is the absolute minimum our passengers expect and deserve. Not injuring anyone is a wholly unsuitable measure of success," Hunter said.

He also cited American Airlines' fourth-place performance in the November 2006 Department of Transportation (DOT) A+14 Dependability and fifth-place finish in Survey America's (SAM) "Overall Travel Experience" measure as further indication that serious work remains to be done to improve the airline's operational performance and customer experience.

"In announcing these latest results to employees, management appeared to celebrate the fact that the airline had improved upon its dismal prior showings in both surveys," Hunter said. "We believe the airline would be better served by management focusing on how to improve customer service, rather than celebrating mediocrity."

"Management's recent decision to amend its application for DFW-Beijing service to include a Chicago stopover on the outbound leg is another indication of misplaced priorities," Hunter said. "The China route award was within American's grasp, yet management made little more than superficial attempts to negotiate the necessary pilot contractual provisions to make it happen. Management gave away a profitable route by rejecting a fair and reasonable APA proposal that would have cleared the way for American Airlines to win the Dallas-Beijing route award."

"This outcome is particularly inexplicable in light of the fact that APA's proposal was actually less expensive than the amended route proposal management ultimately submitted and the DOT rejected. We still fail to see the business case behind management's decision to abandon negotiations with its pilots, withdraw its application for a valuable new international route and forgo hundreds of millions in additional revenue for both the airline and the region."

"Management's recent decisions are costing American Airlines millions in lost opportunities. They should stop rewarding themselves for their failures."

Founded in 1963, APA is headquartered in Fort Worth, Texas. There are currently more than 2,800 American Airlines pilots on furlough. The furloughs began shortly after the Sept. 11, 2001 attacks. Also, several hundred American Airlines pilots are on full-time military leave of absence serving in the armed forces. The union's website address is www.alliedpilots.org. American Airlines is the Nation's largest passenger carrier.

April 2, 2007

ABANDONED BY UNITED AIRLINES

To Whom It May Concern:

My name is Roger Barbour, Jr. I was on the United Airlines Flight 7529 Dec. 20, 2006 that left its passengers in Cheyenne, Wyoming with no help or support. Here is my story of what happened to me and the disgraceful misconduct of United Airlines for abandoning us.

I first purchased my round trip United Airlines ticket in November because my father's health was declining and I had not seen my parents for over 4 years. However, I had purchased my ticket to leave in December and see my family. I never thought I would never see my father again. He passed away in his sleep on November 20, 2006 before I could see him.

The day that I arrived at the International Airport in Edmonton, United Airlines was behind at that very moment. They told us to be there at 4 a.m. and did not open the ticket counter till about 6 a.m. The custom agents were not happy. I hope that this would be the only problem that I would encounter. The flight from there to Cedar Rapids, Iowa was uneventful.

On December 20, 2006 my best friend Mike drove me to the Cedar Rapids airport. I arrived very early in the morning without a thought of any problems. When I arrived at the aircraft gate for United Airlines the passengers were informed that there was a mechanical problem with the computer systems of the aircraft because the night before it had a hard landing. They did not fix the problem till over 2 hours later. Most of the people were fine with this little problem thinking that though we would be late United Airlines would call ahead and take care of any problems that the passengers might have with connecting flights.

After 2 hours we finally boarded the aircraft and headed to Denver, Colorado and this is when everything started to go wrong. When we entered Denver airspace we were informed that we would be in a holding pattern to land at Denver Inter-

national Airport. We were in the air flying in a holding pattern for an hour. Then we were informed that we were going to land in Cheyenne, Wyoming to refuel the aircraft and then we would depart for another airport. We were on the plane for an hour or more before the pilot said he would let us off till they got the planes refueled. We waited in the terminal for about 2 hours waiting for the planes. There was also another United Airlines plane that was diverted with us. This senior pilot started to offer people a seat on their aircraft for Chicago if anyone wanted to go there to catch another flight. I asked him if I could go, but then changed my mind and would stay with my aircraft.

While at the airport people started to leave since their final destination was Denver, Colorado and their relatives were coming to pick them up. So, the rest of the passengers just waited. Then after about 2 hours we were allowed back on the planes after a security check was performed on every passenger. We were then again on the plane for about an hour or so before the pilot said the deicer that was being used was freezing before we could take off again and for safety reason we should wait till the next day to fly to a major airport. This was fine with all the passengers because the last thing we wanted to do is crash on take off. However, this started the major problems.

When we were back in the terminal as we waited for our luggage to be offloaded we thought that United Airlines would help us with this problem. When we got the luggage off the airlines everyone started to make calls and try to find a place to stay. This was a major problem for me since I only had \$600 in U.S. currency on me at that time. This money is all I had left to help pay my tuition (though this was not even close to being enough to pay it off). Since my father passed away all of his retirement pay and any money that my parents had were frozen by the government. I had given my mother some money to help here and my professor said he would find me a job at my university to help me out when I got back.

The pilots and crew from both aircraft were taken to the Holiday Inn first with the passenger waiting for a ride to go there. We thought that United Airlines would help us with the rides to the Holiday Inn, but they did nothing. Each person paid about \$5 U.S. to get to the Holiday Inn. Ann Kinney, another lady, and I were helped with a ride from the outfitter company for hunters at the airport. We paid him for taking us to the Inn. By the time we left the airport it was dark outside and the weather was getting worse. Once at the Holiday Inn we got our rooms (most people had 2-3 roommates to help pay for the rooms). Each person paid about \$35 U.S. for the room. Everyone was trying to get information of what was going on and trying to figure out what we should do.

I started to make calls to United Airlines as soon as I could. It took sometimes over an hour to get through to the ticket agents. After talking with them for about 30 minutes they were able to get me another plane that would be leaving on the 21st if I remember right. That was fine and the person provided me with standby for other aircraft. The one thing that scared me though is that United Airlines did not even know that we were stranded in Cheyenne, Wyoming till we called them.

After I came downstairs I was talking with the senior pilot from the other aircraft. He was helpful and told everyone that he would do anything he could to get us out of Cheyenne, Wyoming and that he wanted us to be at the airport in the morning at 10:30 a.m. Anyone who wanted to come with him could. He then told us that the airport in Denver was closed till December 22, 2006. I was shocked since the man at United Airlines had informed me that the airport would be open in the morning and that I would be able to leave on the 21st of December. So I had to call them back again and see what I could get. At that time it was very difficult to get anything. When I was able to connect I was hung up on by the United Airlines representative.

When I woke up in the morning I headed downstairs with my luggage ready to head back to the Cheyenne Wyoming Airport. When I got downstairs to the main lobby the senior pilot was eating breakfast. I spoke with him and told him I was trying to get back home to get married and that my father had just passed away and I just wanted to get home. He called up his office that very moment and they told him that the plane would be leaving with passengers that morning (This was around 7:30 a.m. December 21). He told me to get to the airport by 10:30 a.m. and he gave me his room number and told me to call him. Around 9:45-9:50 a.m. I called him and he told me to head to the airport and that is what I did. The pilot of our aircraft was rude and did not inform us of anything and did not even want to talk with us at all when we asked him questions.

Once I went outside the sky was blue and it was warm. The snow was melting and we thought without question we would be leaving. I arrived at the airport a little before 10:30 a.m. Almost all the passengers were there and we started to feel happy, but cautious at the same time. The time then was 11 a.m. and the pilots

were nowhere to be seen. We were not sure what was going on. Then around 11:30 a.m. someone spotted the pilots outside with the aircrafts. This caught us off guard since they just went right to the planes and did not even talk with us.

Then someone found out that one of the passengers that was waiting with us was a United Airlines pilot in training and he told us that the aircraft was leaving without us so it could fly to another city to pick up passengers. We were shocked by what he said! He told us he had called his headquarters and they told him this. Then right in front of us he called them again and was told the same thing! We did not know what to do. The pilots did not even come into the terminal and talk with us and tell us what was going on. Then the plane pulled up close to the terminal and the pilot-in-training was screened and his bags were screened by the security personal. We were shocked sitting there watching the planes take off without us. At that very moment people started to sign a paper to take legal action against United Airlines (this paper was given to me). Then people started to take pictures and video of the aircrafts leaving us behind with no help. We were abandoned by United Airlines. We paid for service that was not provided.

At this moment we knew we were on our own and we tried our best to find rental cars and what not to get away from this super small airport because we had no options for flying out since the only airline that operated from this airport was closed and when it opened they said they would have no flights till December 26, 2006. Also, the small airline only flies to Denver International Airport. So the only option was to get a rental car and go from there.

Everyone was looking for a rental car or anything that would get us out of this place. After a few hours of people trying to get cars the ticket counter for the small airline company told us that United Airlines had called them and told them that tomorrow they might send a bus to pick us up and drive us to Denver International Airport. This was not good enough since most of the people needed to get home before that date. Half of people wanted to head to Salt Lake City, Utah to get to the airport there (The pilots told us we could have went to Salt Lake, but they wanted to land in Cheyenne Wyoming) and get a flight. A very nice man gave me \$40 to get something to eat since I had not eaten for one full day because I was scared to spend any money.

After the sun was going down, 5 people and myself were fortunate to get a minivan to drive to Denver. This cost everyone about \$30-\$35 each. One of the guys that were with me has become a good friend. His name Sean Moleski and he is a U.S. Marine. As of March 30, 2007 he is now serving in Iraq and told me to keep him up-to-date with what is going on. We drove as a group to Denver International Airport and saw that no one was there. So we headed to another hotel to wait till the morning. That night I had to again call to get another ticket to fly out of Denver. I was told I could be put on standby for another flight sometime during the week.

When the morning came we all pitched in another \$35 for the hotel and got something to eat (For me this was 2 days without eating so I ate a lot that morning). When we got to the airport we were shocked with how many people were there. We all had to wait for 6 hours just to talk with someone. All the other people with me were able to get flights. I was told I could be put on standby for a flight on December 23 and that is all they could do. I found out by myself that Air Canada was part of an airline alliance with United Airlines. I called them up and was able to get a ticket that cost me about \$200 U.S. to leave on the 23 December without question. The manager at the Florida office told me he knew what I was going though and did everything he could to help. I ended up getting a \$1,599 U.S. dollar ticket for a little over \$200. Later I was told though that the airlines were canceling flights to Edmonton. I called Air Canada back up and within 2 minutes the guy had got me a flight out of Denver that very night at 8:30 p.m. flying into Toronto, Canada with a connection flight to Edmonton at 8 a.m. in the morning. This would allow me to arrive in Edmonton on December 23 at 10:30 a.m. I was so happy and got the ticket.

I went and bought something to eat while I was waiting for the aircraft. Something strange though started to happen. The aircraft was delayed due to rain in Toronto and was pushed back till 9 p.m., then 10 p.m., and then it dropped off the board. I was shocked and people were all wondering what was going on. Then we saw the aircraft and the French Canadian pilot came out and said we were getting off the ground in a few minutes to make sure we don't get stuck in Denver. That pilot got us off the ground and flew so fast we arrived almost 40 minutes early in Toronto. I was never so happy to see an Air Canada plane and was so happy that they came to pick us up. I was able to make it to my wedding on the 29th of December.

In about a month after I was home in 2007 I checked how much I owed on for my cell phone bill. I saw \$100+ Canadian on it and was very happy. The next day however I received a bill that was almost \$800 Canadian! I was shocked and did not know what to do! I called up my service provider and they were able to get it down to about \$550. However, that was still more money than what I could spend. Then when my professor helped me out with a job and I played it off and hoped for the best. I also used my savings that was just about \$200 U.S. to help pay it off. I was broke after this and was very worried. I spoke with the Dean of Computer Science and he got me a teaching job to help me out. Also, the scholarship for graduate students that I had applied for I received and it helped. This helped me get out debt, but I was still hurt financially. I did call United Airlines up and was hung up on not once but two times.

A week or so later I received a call from Gary Stoller a News reporter for *USA Today* news group called me and told me he had heard about what United Airlines had done to the passengers or should I say what they did not do for the passengers. I helped him the best way that I could with his story. The story ran front page on *USA Today* news papers across the Nation. I was so happy that someone was helping us. I was then contacted by the *Denver Post* and told the news reporter there about what had happened. However, with all this happening United Airlines did not even contact me and most of the other passengers. When Mr. Stoller asked them why they did not contact me (since I was one of the main individuals in the news article) they told him that they did not have any contact information for me. I bought my ticket using my credit card and provided them with contact numbers so Mr. Stoller and I thought this was very odd and untruthful.

Then later after Mr. Stoller told them that he would be running another story about what happened I received a phone call from United Airlines. They told me they would provide me with a \$300 voucher to fly again and it would expire in 1 year. I will not write down the words that I said to this individual over the phone, but it was along the effect of "You can take that voucher and put it where the sun does not shine!" I also told this individual that I had spoken with a major law firm that sues airlines and they told me that I can take full legal action against them. Another thing I told her was what makes her think that I would ever want to fly with them again! They treated us like garbage and did not care one bit about what happened to us and the only reason they called was because of the story in *USA Today*.

I was absolutely shocked that United Airlines would treat us this way. For my plane we had over 2 hours of mechanical problems and under law they have to help us and they did not! They then call us up only for damage control to protect themselves after the world found out what they had done to us and offer us a minor incentive that does nothing for our loss and to keep us from talking! I find this down right insulting and legal action should be taken against them. The amount of funds that each individual paid out of their own pocket we thought United Airlines would reimburse us, but what we found out was they treated us like garbage and inhuman when we asked for help! We were something they could discard because no one would take us serious or care about what happens. One more thing that really made me angry was that I found out after I had returned home from my sister a few months later, that when my mother heard about what had happened to me she became so worried that she had a nervous breakdown. After a few weeks my sister was able to get her to go to the hospital. The passing of my father and what happened to me did this to my mother.

As of this day April 2, 2007 United Airlines has not called me back after they spoke with Gary Stoller and said they would. They also told him they would offer us anything we wanted since they found out that Mr. Stoller was going to publish another story about us on April 4, 2007 and as of this date I know they have only contacted two passengers from my flight that are CEOs at two other companies. This shows without a shadow of a doubt their lack of respect and conduct for their passengers! They showed no respect or concerns for any of us!

Sincerely,

ROGER BARBOUR, JR.

New York, NY, April 6, 2007

To Whom It May Concern:

My name is Katharine "Katty" Biscone and I was a passenger on JebBlue flight 351, JFK to Burbank, that was supposed to depart JFK at 6:45 a.m. Feb. 14, 2007, Valentine's Day. After boarding the plane at 6:15 a.m., my flight was basically held hostage and forced to sit on the tarmac for the next *eleven* hours. We never left the

runway, never made it back to a gate, and never had any protection under the current law. JebBlue is claiming it was a weather issue, but there is much more to this story than that.

After we boarded the plane at 6:15 a.m., we all thought, even though the weather wasn't perfect, it must be okay for us to fly or else they would have never boarded us. If there was a chance we would get canceled, they would have had us just wait in the terminal, right? Wrong. JebBlue said after taxi-ing at 6:45 a.m., we were going to have to wait a few minutes to leave until the weather cleared up just a little. That began the eleven-hour game of cat and mouse that the airline played with us. They would put us in the taxi line, then say we had to be de-iced, then they would tell us we froze to the runway, then they would put us back in line to leave, then they said we would deplane as soon as a gate opened up. But, a gate never opened up, so they put us back in the line to leave. This went on *forever*, and the entire time we were forced to stay seated. Remember, we were supposed to be the first flight out that day, and we ended up being the last to get de-planed.

My very full flight was loaded with the elderly (who are *very* susceptible to blood clots), people with new babies and toddlers, and a handful of pregnant women. I had shoulder surgery last summer and am still healing from it, so I knew a 6-7 hour flight would test my body, including my back and hips, but I thought I could handle it with no problem. Unfortunately, at around hour 8, my hips, shoulder and back began to throb, and I've had problems with all three ever since the ordeal and I'm know I'm not alone in my physical pain. People all through the plane were complaining of back and body issues the entire time.

During these 11 hours, they never told us why they couldn't get us back to a gate, and to this day I still don't know why. They kept promising at any moment we would leave. But, at one point, the air system froze, and it became sweltering in the plane. The satellite froze up, so the TV was on and off constantly, and the worst was when the lavatories filled up completely, and we could no longer use the bathrooms the last few hours of the ordeal. There was also no beverage or food service. If you went to the back of the plane and begged, they would give you a tiny bottle of water, and maybe a bag of chips or cookies. But, after 11 hours, that was not enough. It was cruel. And there was nothing we could do about it. In the current state of airport security, people don't bring food or beverages with them from home. I know a lot of people counted on sleeping during the flight, but when we were put in a constant state of flux, no one really slept, and people were hungry and thirsty. People were behaving well, but some people really started to panic and get claustrophobic, and who wouldn't after being stuck on a small, crowded plane for a day. I've had panic attacks ever since. They usually occur when I'm on a very crowded subway and it starts to get hot. I feel trapped, just like I did on Valentine's Day on my flight. JebBlue also reminded us if anyone tried to force their way off the plane, they would get 20 years in jail automatically because of the PATRIOT Act. There was even an emergency AA meeting in the aisle by the rear lavatories. People didn't know what to do. There was nothing we could do. We were absolutely trapped, and had no protection, no recourse. I have to say, I thought that the passengers were really amazing and totally patient. The fact that no one lost his or her mind is still shocking to me. JebBlue was very, very lucky!

To add insult to injury, when we tried to call and reschedule our flights from our cell phones on the plane, JebBlue wouldn't let us because they kept saying our flight had not been canceled . . . even though we had been trapped for over 6 hours at that point. If they had at least given us a chance to figure out another way to get to Burbank . . . but they even took that option away from us. They did not officially cancel the flight until the 10th hour, and by that time, there wasn't room on any of their flights until Saturday, and when I asked if they could book me on a different airline . . . we got "disconnected." It was obvious that our welfare meant nothing to JebBlue. All they care about is the bottom line, and the fact they would torture and entire plane of passengers and crew is just evil. The final reason we ended up not taking off is because our crew would have technically been illegal to go because of the hours they are allowed to work. The second their time ran out, somehow JebBlue was able to get a staircase to the plane and put us on buses to the terminal. Which mean, *They could have done that the entire time!!!* Or at least bused out food or drained our bathrooms or something! Anything! We were lied to, abused, and held hostage with absolutely no options what so ever. We have got to start protecting passengers.

They had no one helping us to figure out what to do when we got off the plane. We just wandered around the airport until we figured out which 4-hour line to stand in to get help. At that point, they couldn't even get me out until Saturday night. Remember, this was a dawn flight on Wednesday. I never even went to California. I missed my best friend's first movie premiere ever, and it took me weeks

to not be in constant pain. God knows what other people lost by being stuck on that plane. The only good thing that came out of that experience is I can win any "Worst Valentine's Day Ever" contest. Please, please, please pass this bill of rights. I don't ever want this to happen to anyone else ever again.

Thank you,

KATTY BISCONI.

The CHAIRMAN. Thank you very much, Ms. Hanni.
Now may I call upon Mr. Chandran?

**STATEMENT OF RAHUL CHANDRAN, PROGRAM
COORDINATOR, CENTER ON INTERNATIONAL COOPERATION**

Mr. CHANDRAN. Thank you, Mr. Chairman, honorable Committee members. Thank you for the opportunity to testify today.

I am a frequent flier, and I don't represent anyone.

Over 8 years have passed since I was first stranded on the tarmac in Detroit, courtesy of Northwest Airlines. It was now—it's an infamous incident by now, and I'm sure that you've heard plenty of the details. I simply recall many hours of miserable monotony, unpunctuated by either water or food, the frequent refusal to allow customers to use the facilities, and a complete lack of information or communication. In the furor that surrounded this incident, the airlines promised us greater self-regulation, arguing there was no need for legislative protection of passengers, as the airlines had our best interests at heart. So, I continued to fly. It's my job. I have no choice.

Shortly thereafter, in early 2000, I was on a United flight at Washington Dulles in the middle of the summer, a sweltering summer's day, and it was a short hop up to New Haven, Connecticut. We left the gate sometime around 1 p.m. We returned back to the gate around 5:30, having sat in a tiny, terribly hot turboprop, with neither water nor food nor access to the bathrooms, and certainly no information. We sat there, in near silence, for 4 and a half hours, on a D.C. tarmac under the hot sun, no air conditioning. I'm sure you can imagine how much fun that was. There were no more than eight people aboard this flight, but eight people trapped in a metal tube designed to retain heat on that tarmac for 4 hours are still eight people on the boundaries of reasonable tolerance.

On the 16th of March, less than 1 month ago, I suppose having not learned my lesson and continuing to fly regularly—

[Laughter.]

Mr. CHANDRAN.—and just 1 month after the incidents that affected JetBlue, you know, 10 weeks after the American Airlines incidents, I arrived at JFK Airport at 8 p.m. There had been some snow and earlier flight cancellations at other airports, but the website for the airline that I was flying, Cathay Pacific, assured me that the flight would take off, as scheduled.

Having flown over a million miles, I came with several Heath Bars, a couple of bottles of water, and made sure my laptop was juiced up, because I figured there would be some delay. After two, two and a half hours of waiting, we boarded the plane at midnight. I exited the same plane at 9:43 in the morning, 9 hours and 43 minutes after we had left the gate. The intervening period had been passed on the runway, waiting—waiting for de-icing fluid, waiting for gates to become available, waiting for taxi space. In

short, waiting. Waiting, that is, with our seatbelts securely fastened, our tray tables stowed, and our seatbacks upright, so no ability to enjoy even the little, but incredibly important, 3 inches of recline that you get in economy.

[Laughter.]

Mr. CHANDRAN. Now, in certain respects, and in all fairness to Cathay Pacific, this was the best terrible, intolerable delay that I have ever encountered. The captain was reasonably communicative. He promised us 45 minutes of resolution every hour and a half; and then, every hour and a half, told us that, in fact, the problem had not been resolved. The crew generously allowed us to use the restrooms, which was fairly exciting, but they didn't offer us water, so that we weren't encouraged to use the restrooms too often. We were actually, in fairness, watered after 1 hour, and then again after 6 and a half hours.

Eventually, when the flight was canceled, and prior to a final 2-and-a-half-hour wait for a gate, they fed us what was supposed to be our dinner. Now, given that almost all the dining establishments in the terminal had stopped serving food around 10 p.m., this meant a good 10 and a half hours since most people—and it was a flight full of kids—since most people—10 and a half hours since people had had any food, during which they had stayed awake, with their seatbacks fully upright.

So, we were watered twice, fed once, and sent upon our way. Upon disembarking, we received a \$15 voucher for food available at the terminal, and passengers were asked to wait around. I chose not to wait any further, and decided to go home and live my life.

Honorable Senators, I'm sure, as you are all aware from your experience, there comes a point where the consequences of a series of poor decisions accrete and you have an intolerable outcome. Plane delays happen. I continue to fly. I've been delayed in over 30 countries, for reasons that range from the very, very real and salient to the slightly incredible. I recognize that pilots need to respond both to the profit motives of their airlines and to make a good-faith effort to try and get passengers off the ground, airborne—and safely. But it is clear to me, through all of these experiences, that the companies that run airlines have failed to implement the measures that will prevent the intolerable outcome: passengers trapped on a plane on the tarmac for more than 5 hours. That, ladies and gentlemen, is simply intolerable.

We continue to fly—I think I speak for all air passengers—because air travel is part of the engine of economic growth that has made America great. It's simply a necessity. It's no longer a luxury. A simple bill of rights that provides passengers with the confidence that airlines will take care of our basic needs—we are like plants, we need to be fed, we need to be watered, and occasionally we need our compost cleaned—airlines must take care of our basic needs and prevent us from being confined in intolerable conditions. We must ensure that they are responsible to us, and held accountable. And this, and only this, will secure our continued confidence in flying.

If this type of incident is truly infrequent, and if airlines truly consider confining passengers to the airplanes aberrant, then it will

do so at little cost to the industry, as these are measures the airlines have long claimed to have in place.

An earlier witness talked about the possible [inaudible]. I can't speak for anybody else but myself. I can, however, tell you this with confidence. If I am on an airplane for more than 4 hours, I want to get off. I want to go home. I want to continue my work. I want to make sure my children will be fed. I want to make sure my family is OK, and make sure a dog somewhere—I don't have a dog, but I'm sure there are many hypothetical dogs out there—that the dog is taken care of and walked. And I recognize that the system has experienced problems and needs time to recover. And recover, it will.

I thank you for the opportunity to testify today. I will be glad to take any questions.

Thank you.

[The prepared statement of Mr. Chandran follows:]

PREPARED STATEMENT OF RAHUL CHANDRAN, PROGRAM COORDINATOR,
CENTER ON INTERNATIONAL COOPERATION

Chairman Inouye, Vice Chairman Stevens, honourable Committee Members, it is an honor to testify today, and I thank you for the opportunity to discuss the need for improvements to airline services.

Over 8 years have passed since I was first stranded on a tarmac in Detroit, courtesy of Northwest Airlines during the now infamous incident of January 1999. I have not thought about the incident for many years, and I am sure that the honorable members of the Committee are familiar with the incident; I simply recall many hours of miserable monotony, unpunctuated by water or food, the frequent refusal to allow customers to use the "facilities," and a complete lack of information or communication.

In the furor that surrounded this incident, the airlines promised greater self-regulation, arguing that there was no need for legislative protection of passengers as the airlines had their best interest at heart. The free round-trip ticket I received from Northwest as "compensation" for the ordeal, I returned to Northwest.

Shortly thereafter, in early 2000, I was on a United flight at Washington Dulles, during a sweltering summer day, for a short-hop up to New Haven, CT. We left the gate, sometime around 1 p.m. Approximately 4 hours later, having sat in a tiny turbo-prop, with neither water, nor access to the bathrooms—and certainly no clear information, we returned to a position near a gate, and the door was opened as the passengers were near rioting. There were, I believe, no more than eight people on-board this flight. Eight people, trapped in a metal tube designed to retain heat, on the tarmac in the hot summer sun, without air-conditioning or refreshment for 4 hours, are still eight people on the boundaries of reasonable tolerance.

On the 16th of March, less than 1 month ago, and just 1 month after the series of incidents that affected JetBlue, I arrived at JFK airport at 8 p.m. Although there had been some snow, and earlier flight cancellations at other airports, the website for Cathay Pacific—the airline that was slated to carry me to Vancouver—suggested that flight 889 would take off as scheduled. I came prepared, as several hundred thousand miles of flying have left me convinced that airline websites are rarely up-front about delays.

After about 2 hours of waiting, we boarded the plane at midnight. I exited the same plane at 9:43 a.m., 9 hours and forty-three minutes after had left the gate. The intervening period had been passed on the runway, waiting for de-icing fluid, waiting for gates to become available, waiting for taxi space—in short, waiting. Waiting, that is, with our seat-belts securely fastened, our seat-backs upright and tray-tables stowed, and no ability to enjoy even the little—but important—comfort of the three-inch recline that economy class offers.

Now in certain respects, this was the best delay I have ever encountered. The captain was reasonably communicative about the delays, although his promises of a forty-five minute resolution were only reported as having failed after about an hour and a half. The crew allowed passengers to use the restrooms, and offered us water. Twice that is—once after about 1 hour, and once after six and a half hours. Eventually, when the flight was canceled—and prior to the last 2 hour wait for a gate—they fed us what was supposed to be our dinner. Given that almost all the dining

establishments in the terminal had stopped serving food around 10 p.m, this was a good ten and a half hours after most people had last had any food, during which they had been kept awake.

So we were watered twice, fed once, and sent about our way. Upon disembarking, we received a \$15 voucher for food available at the terminal. I chose not to wait any further, and went home.

Honorable Senators, as I am sure you are all aware from your experiences, there comes a point when the consequences of a series of poor decisions accrete, and you have an intolerable outcome. Plane delays happen—I continue to fly, and have been delayed in over 30 countries, for reasons that range from the real to the incredible. Pilots need to respond to the profit-motive of their masters, and to make a good-faith effort to get their passengers off the ground, and airborne, safely.

It is, however, clear to me through all of these experiences that the companies that run airlines have failed to implement management procedures that prevent the intolerable outcome—passengers trapped on airplanes for more than 6 hours.

We continue to fly because air travel is part of the engine of economic growth that has made America the success story that it remains today. A simple bill of rights that provides passengers with confidence that airlines will take care of their basic needs, prevents them from being confined in intolerable conditions, and ensures that airlines are responsible and held accountable for their actions will help to ensure that this remains the case.

Thank you for your time.

The CHAIRMAN. Thank you very much.
May I now call upon Mr. May?

**STATEMENT OF JAMES C. MAY, PRESIDENT AND CEO,
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.**

Mr. MAY. Thank you, Mr. Chairman. I—and members of the Committee—I'm pleased to be here today on behalf of nearly 400,000 passenger airline employees, who, every day, make it their mission to transport over 2 million passengers throughout the United States, and the world, as quickly and smoothly as possible.

Much has been said today about the quality of airline customer service; some of it harsh, some of it fair and deserved. While we don't always get it right, with more than 20,000 flights a day, we do get it right most of the time. What troubles me is the suggestion that our members and their employees don't care about how passengers are treated. That's simply not true. They care deeply about their customers and the service that they receive. And suggestions to the contrary are wrong.

Following safety, on-time service is the most important factor for success in the airline business. The reputations that the airlines earn for good service is the currency they have to offer in the marketplace for passengers.

This afternoon, I'd like to emphasize two key points.

You can't effectively legislate operational response to what we call irregular operations, including severe weather; and, two, arbitrary deadlines and inflexible standards have serious unintended consequences.

Delays and cancellations are the enemies of every airline. They're costly, they interfere with customers' plans, they drive missed connections and mishandled bags, they upset carefully constructed flight schedules, and create a cascading effect that can spread to many cities and disrupt passengers' plans for several days. The DOT estimates that delays cost airline passengers \$9½ billion in 2005—I think that's 2006; and the airlines, nearly \$6 billion. Thus, passengers and airlines have an identical goal of completing scheduled flights safely and on time.

And I think these factors alone are incentive enough for airline members to work hard to avoid delays and cancellations. But there's another powerful incentive at work, and it's the marketplace.

Recent events have clearly caused all carriers to review their policies and procedures, update contingency plans, and engage their key airports in discussions about dealing with severe weather situations. In addition, as you heard earlier, the DOT Inspector General is reviewing these incidents very specifically, and will soon issue a report that should clarify exactly what did, or did not, happen, and make appropriate recommendations. ATA, our board, actually called for DOT to review these incidents, following our February board meeting, and we very much look forward to the Inspector General's report.

Finally, extended delays are, in fact, rare, and the extraordinary weather that triggered these events cannot be overlooked. The decisions American and JetBlue made as their situations unfolded involved extensive and ongoing internal coordination, consultation with ATC and FAA officials, and were made with the goal of getting passengers to their destinations safely. As it turned out, on December 29, 2006, American Airlines experienced more diversions than on any other day in the entire airline's history, with the exception of 9/11. Moreover, delay statistics maintained by DOT show that just 36, out of more than 7 million flights in 2006, had delays of more than 5 hours. And about 1,260 flights were delayed between 3 and 5 hours. Even if you were to triple or quadruple those numbers in response to Ms. Hanni's concern, that is a very small percentage of the 7.2 million flights annually in the United States.

Now, in short, I don't think Congress can legislate good weather or the best way to respond to bad weather, because every situation is clearly unique. A strict 3-hour limit, even with a 30-minute extension, would eliminate carrier flexibility to deal with these unique situations, and inconvenience, we think, more, not fewer, passengers. No passenger likes a delayed flight. But what they like even less is not being able to reach their destination at all.

The proposed legislation will force airlines to inconvenience plane loads of people to satisfy the demands of a few to deplane. And we don't think that is good customer service. By forcing carriers to deplane passengers, which, in most cases, would require—most cases, not all—would require the plane to return to the terminal, the legislation could lead to an overall increase in cancellations, unplanned overnight stays for individuals, including unaccompanied minors, more bags missing connections, missed meetings, vacations, and cascading cancellations and delays caused by planes and crews out of position. Moreover, fully loaded airplanes make rebooking passengers on flights increasingly difficult. And I'd like to re-emphasize that point. With full load factors, if we cancel a flight, rebooking those passengers on future flights is increasingly difficult.

So, in conclusion, I think flexibility is the best tool an airline has in responding to these situations. More passengers will be inconvenienced by a strict rule requiring airlines to deplane them, instead of letting the airlines deal with these extremely rare situations using their knowledge and experience.

What is in the best interest of passengers is, in fact, in the best interest of the airlines, which is limiting cancellations and completing flights safely. Airlines and their customers need crews and planes to get to their destination to keep the system running. With 42,000 city pairs and more than 20,000 flights a day, carriers require that flexibility to respond to irregular operations and get passengers safely to their destinations.

Thank you for allowing me to appear today, and I obviously expect there'll be a few questions.

[The prepared statement of Mr. May follows:]

PREPARED STATEMENT OF JAMES C. MAY, PRESIDENT AND CEO,
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.

Introduction

The hallmark of the *Airline Deregulation Act of 1978* ("ADA") was Congress' policy determination to place "maximum reliance on competitive market forces and on actual and potential competition"¹ among airlines to drive efficiency, innovation and low prices, and to provide "the variety and quality of, and determine prices for, air transportation services."² While not always neat and clean, marketplace competition in the airline industry has produced stunning consumer benefits in the form of low fares, expanded service options and product differentiation, and a steady flow of new airlines eager to challenge incumbents. As a result, more Americans fly for business and pleasure, and ship goods by air, than ever before. Air transportation has become an indispensable element of America's infrastructure and our Nation's economic well-being.

The proposed Airline Passenger Bill of Rights Act of 2007 (the "Bill") was offered in response to specific delay events involving two ATA member airlines. These events were serious and regrettable, and travelers' unhappiness is understandable. As explained below, however, the concerns that this Bill seeks to address do not require new legislation. The market forces the ADA unleashed, bolstered by existing regulatory mechanisms, are fully capable of bringing about appropriate changes to airline policies and procedures. Indeed, those changes are underway already. On the other hand, this Bill would undermine Congress' judgment to place "maximum reliance" on market forces, add costs for airlines and reduce consumer benefits going forward. In addition, the Bill would have numerous unintended consequences that would increase, rather than prevent, customer inconvenience.

Airlines Care about and Provide Good Customer Service

It should be obvious that no one cares more about completing scheduled flights on time than the airlines and their employees. After safety, on-time service is critical for success in the airline business. Good service and on-time performance are what the airlines sell, and the reputation an airline earns for good customer service is the currency it has to offer in the marketplace for passengers. Good service and on-time performance ensure repeat business, and that is the goal for all airlines because it leads to commercial success. On the other hand, poor service and on-time performance drive customers away and, ultimately, lead to failure. No airline is in business to fail.

Every year, airlines spend millions of dollars on new products and upgrades, reservations and check-in systems, online systems, personnel and training to make it easier for passengers to purchase tickets, print boarding passes, obtain special services, and enhance the inflight experience. They do this not only because of competition to differentiate themselves from their competitors and to drive customer satisfaction, but also because the easier it is for passengers to access their flights and services, the more efficient the airline operation becomes. This, in turn, drives down costs and frees up resources for growth, capital spending and further product enhancements.

A good example is online check-in. Many airlines have now deployed this service, which allows passengers to print their boarding passes at home or work and bypass traditional airport passenger processing. This benefits passengers and airlines alike, reducing the passenger's time at the airport, easing crowded airport lobbies, and al-

¹ 49 U.S.C. § 40101(a)(6).

² 49 U.S.C. § 40101(a)(12).

lowing gate agents and customer service representatives to focus on passengers who need personal assistance.

Other examples abound. Airlines have begun introducing Spanish-language check-in kiosks, and many airlines are adding check-in kiosks throughout their systems as e-ticketing becomes more prevalent. New terminals are being constructed and aircraft interiors are being refurbished with new seats and entertainment systems.

In response to the 1999 Customer Service Commitment, ATA member airlines instituted a variety of measures and developed new systems to improve customer service, such as automated voice and Internet messaging about delays and schedule changes, automated re-booking systems when severe weather forecasts lead airlines to proactively cancel flights in advance of extreme weather conditions, and re-booking hotlines. They also have developed internal policies and procedures to monitor delay situations, including taxi-out delays, and to implement event-specific plans to minimize customer inconvenience.

Notwithstanding these varied customer service initiatives, airline customer satisfaction is measured first and foremost by on-time service and flight completion. Airline operations are incredibly complex, intricate systems with a significant number of moving parts that airlines can control, but also two major external factors that are completely out of their control: weather and the air traffic control (ATC) system. These two factors greatly affect on-time performance and flight completion and, for this reason, can be the source of great frustration for airlines. *Together they accounted for approximately 66 percent of all delays in 2006, according to FAA data.*³ When bad weather hits, the best efforts of the airlines sometimes cannot overcome the impact on operations. That was the case in December 2006 and February 2007.

Legislation Is Not Needed

Unusual Weather Conditions Triggered Unusual Delays

The two delay events that led to the proposed Bill were caused by extraordinary weather conditions. This factor alone distinguishes these two events. In the case of American Airlines on December 29, a storm pattern in north Texas affecting Dallas-Ft. Worth International Airport (DFW) that normally would have dissipated relatively quickly (often in less than an hour) kept reforming over a period of 8 hours. Every time it appeared that an operational window was about to open, the storm refocused and the window slammed shut. The storm literally defied years of experience and weather forecasting expertise. On almost any other day, the planes diverted to Austin would have recovered to DFW within two or 3 hours. In fact, American experienced more diversions on that day than any other day in its history except 9/11.

Likewise, in the case of JetBlue Airways, the winter storm that struck John F. Kennedy International Airport (JFK), which also affected most of the northeastern U.S., was extremely intense and unlike forecasts for much of the time consisted of a particular type of precipitation known as “ice pellets.” FAA recently had dictated severe departure restrictions in ice pellet conditions and these restrictions unexpectedly but effectively prevented JetBlue and other airlines from being able to operate departures. The airport continued to accept arrivals, however, and it quickly became gridlocked, with aircraft unable to either takeoff or return to the terminal.

In both cases, there were numerous factors that led to passengers being onboard some airplanes much longer than ever expected. Chief among them were (1) the reasonable expectation, based on past experience and current forecasts, that weather and airport conditions would change and permit operations to resume; (2) the knowledge that the overwhelming majority of passengers much prefer to take a delay but get to their destinations rather than have their flights canceled, especially over holiday travel periods; (3) crew members, like passengers, prefer to depart late and get home or to their intermediate destination rather than have a flight canceled—particularly if the flight has been diverted; and (4) operational recovery occurs more quickly, and all upcoming passengers benefit, if as many airplanes and crew members as possible are able to reach their scheduled destinations, even if delayed. In short, these incidents are classic cases of “creeping delays” and best intentions of carriers gone awry.

In hindsight, could these situations have been handled better? Undoubtedly so, as the carriers themselves have stated. But it is also true that these airlines, and every other U.S. airline, learned valuable lessons from these incidents. As a result, ATA member airlines are all taking steps to prevent a recurrence of events such as these.

³ FAA Opsnet, <http://www.apo.data.faa.gov/opsnet/entryOPSNET.asp>. The Bureau of Transportation Statistics, which DOT uses for its monthly “Air Travel Consumer Report,” uses slightly different data and categories, reported that just under 60 percent of 2006 delays were caused by weather and ATC.

Can we say they will never occur again? In truth, no. But the likelihood they will is extremely small.

Extreme Delays are Rare

Another reason why this legislation is not needed is that extreme taxi-out delays are rare. In 2006, 36 out of 7,141,922 flights reported had delays of more than 5 hours after pushing back from the gate. That is just 0.0005 percent, or five ten-thousandths of a percent. This statistic is hardly reason to justify legislation to substitute the judgment of Congress for that of the executives who not only run these businesses on a daily basis but also are responsible for their safe and timely operation.⁴

Even if this number were to double in 2007, which we do not believe will be the case, it would not support new governmental impositions on the airlines. Likewise, if we consider the 2006 delays of three to 5 hours, there were only 1,259 flights affected. That amounts to 0.00018 percent of the 7,141,922 flights reported. In short, for a system that operates 24 hours a day, 365 days a year, that must respond to winter snowstorms and summer thunderstorms, and that safely moves more than 740 million passengers and 2.5 million tons of cargo annually, there are remarkably few extreme delays.

Delays are Costly for Airlines and Passengers

Delays and cancellations are the enemies of every airline. They interfere with customers' plans, drive missed connections and mishandled baggage, upset carefully balanced flight schedules, throw off carefully planned crew scheduling, and potentially create a cascading effect that can spread to many cities and disrupt passengers' plans for several days. DOT has estimated the cost of delays to U.S. airline passengers in 2005 at \$9.4 billion. At \$62 in direct operating costs *per minute* of flight delay, DOT has estimated that in 2005 delays cost airlines an additional \$5.9 billion.

Market Forces and Existing Regulatory Oversight are Working

Regulation of an industry or enterprise is justified when market/economic forces do not cause that industry or enterprise to conform to social norms or to protect the health and safety of workers and the public. That is not the case here. On the contrary, the intense media coverage of the negative public reaction to these incidents caused both American and JetBlue to promptly modify their policies and procedures. American, for example, has adopted an internal policy that will prevent onboard delays from exceeding 4 hours. Likewise, JetBlue voluntarily adopted a policy that will prevent onboard delays of more than 5 hours. JetBlue also implemented its own Customer Bill of Rights that covers (and in certain cases compensates for) delays and cancellations. This positive response by both carriers demonstrates that the pressure of market forces is working and that government intervention is not necessary.

Other carriers likewise have heard customer concerns and have responded by initiating internal reviews of their policies and procedures to deal with extended delays, by reviewing and updating contingency plans, and by engaging their key airports in discussions about how best to deal with these kinds of situations. Carriers also are examining the capacity of their call systems, adopting contingency plans for handling high volumes during emergencies, as well as evaluating computer-based systems that would automatically re-book passengers whose flights are canceled.

In addition to airlines' voluntary responses, Department of Transportation (DOT) Secretary Peters has asked the DOT Inspector General (IG) to investigate these incidents in light of the airlines' commitment to meet customers' essential needs during extended onboard delays and to have contingency plans in place for such events. The 1999 "Airline Customer Service Commitment" by 14 ATA member airlines provides that "the airlines will make every reasonable effort to provide food, water, restroom facilities and access to medical treatment" in the event of extended onboard delays consistent with safety considerations. The Secretary also requested the IG to provide recommendations on what airlines, airports and the government might do to prevent a recurrence of these kinds of extended delays and to highlight industry best practices. *American and JetBlue, as well as many other airlines, have cooperated with the IG's office during this investigation and have provided numerous documents and extensive data not only about these events, but also about their internal policies and procedures.*

⁴To put that number into perspective, the chance of a flight delay of greater than 5 hours (approximately one-in-200,000) is approximately the same as dying from falling down the stairs, based on National Safety Council statistics. See: <http://www.nsc.org/lrs/statinfo/odds.htm>.

The IG's report, due in mid-May, thus will identify potential measures for carriers and other stakeholders to consider adding to their policies and procedures with respect to avoiding, and responding to, significant delays. ATA looks forward to the IG's report because it will also clarify the facts of these incidents—and correct inaccurate media reports indicating that particular flights had no food, water or working lavatories. We understand that neither American nor JetBlue flights were without food, drinks or water, and at least one working lavatory.

Finally, the proposed legislation is unnecessary because DOT already has existing authority to investigate air carrier compliance with its consumer protection regulations, including the prohibition against unfair and deceptive trade practices, and to fine carriers for violations of these obligations. DOT's enforcement office executes this authority and has a long history of actively protecting consumer rights, including issuing fines to airlines.

Congress' determination to rely on market forces clearly was the right judgment. As the carrier responses to the recent problems demonstrate, market forces are driving improvements to customer service. And the market-driven responses already undertaken by airlines have been bolstered by the Secretary's request for an investigation and report by the IG. When issued, the IG's report may identify additional measures the carriers can take. Finally, not to be overlooked is the significance of congressional hearings like this one and the upcoming hearing before the House Aviation Subcommittee. Together, these measures are more than adequate to ensure that consumer rights and interests are protected.

Airline Operations Are Complex and the Proposed Bill Would Have Adverse Consequences for Passengers

The proposed Bill provides that any passenger who wants to get off an airplane delayed on departure for 3 hours must be deplaned if safe to do so, unless the pilot reasonably believes the plane will takeoff within 30 minutes. A hard and fast rule like this will have numerous unintended consequences that, ultimately, will create even more inconvenience for passengers and lead to even more flight cancellations.

No passenger likes delay, especially long delays. But what the majority of passengers like even less is not being able to get to their destination at all. A late flight is better than no flight, and can mean the difference between attending and not attending an important event or long-planned vacation. If the flight returns to the gate and is canceled, then the passengers will very likely be delayed at least into the next day, if not longer. Even if the flight is not canceled, planes will lose their place in line to depart by being forced to go back to the terminal or getting out of line to deplane passengers by air stairs. This, necessarily, will cause even longer delays for everyone else. Consequences that will occur, particularly from a return to the gate to deplane a passenger, include:

- Cancellations because crews "time out."⁵
- Flights delayed because they lose their place in the departure line.
- Unplanned overnight stays for unaccompanied minors.
- Mishandled baggage.
- Missed meetings and vacations.
- Cascading cancellations and delays caused by planes and crews out of position, especially when diversions are involved.
- An overall increase in cancellations because airlines will pre-cancel flights to limit passenger inconvenience and operational complications caused by the Bill's requirements.

These consequences are likely to be exacerbated if a flight cancels at a city to which it has been diverted.

The impact of flight cancellations extends beyond the passengers on the canceled flight. Operationally, the consequences for airlines and *the next day's passengers* include:

- Crews and aircraft are "out of position" and the next day's schedule is compromised.

⁵FAA regulations on duty limits and rest requirements for pilots and flight attendants, as well as carrier collective bargaining agreements that go beyond the regulations, limit the amount of time pilots may be on duty without a rest break. Limited provisions that allow the duty day to be extended because of reasons beyond the control of the airline assist in dealing with weather related delays. However, the utility of these provisions will be curtailed significantly by forcing planes back to the gate to deplane passengers.

- Passengers at the destination city must wait for the aircraft to arrive the following day, delaying or canceling *their* departures.
- Flight crews “deadheading” on the canceled flight will not reach their destinations and will not be available to operate their scheduled flights.
- Aircraft will be forced to traverse congested runways/taxiways when logistically possible (as it was not for long periods at JFK during the storm gridlock) to return to the terminal.

Airline Customer Service in the Post-9/11 Era

On a broader basis, airline customer service in the post-9/11 is a relevant discussion point for this hearing. Good customer service is important to our members and they understand it drives consumer choices. But, as with virtually every other aspect of airline operations, the effects of 9/11 continue to be felt in the customer service area. While our members have done much to address customer service concerns over the last five-plus years, they also recognize that in some respects customer service is not at the level they want it to be or provided in the preferred manner. The reasons for this are many. Chief among these are the operating limitations imposed by an aged and inefficient air traffic control (ATC) system.

The Air Traffic Control System is at Capacity

The current ATC system relies on a series of ground-based platforms that are linked to form a very complex network system that supports airways, through which aircraft fly. The system was designed to create point-to-point routings which we now recognize are inherently limiting and inefficient. Today, airways increasingly resemble many highways: they have become saturated. Even in good weather, the system is just able to handle the traffic demand. When severe weather disrupts the airway system, the impact on airline operations is immediate and often widespread. FAA has developed a number of programs to ensure safe operations in these conditions, but the effect of these programs is flight delays and cancellation, which inexorably leads to unhappy passengers.

Government must do everything it can both in the near term and long term to improve airspace capacity and system performance, particularly during adverse weather conditions. Point-to-point airways cannot produce substantial new capacity, or allow operations in weather conditions that today force FAA to reduce airway capacity. In the long term, we have no choice but to introduce new technology to generate needed capacity and new operating capabilities. Potential capacity enhancements and efficiency improvements, so critical to meeting growing air traffic demand and responding to environmental concerns, will remain unrealized unless the ATC system is promptly and thoroughly transformed. In the near term, incremental capacity enhancements must be pursued vigorously. These include the New York and Chicago airspace redesign projects, ADS-B implementation and expedited development of RNAV/RNP procedures.

Most Airlines Remain Financially Precarious

The well-documented drop in traffic after 9/11 and the related external shocks of SARS, the Gulf War and skyrocketing jet fuel prices brought the industry to its knees. From 2001 through 2006, the industry lost \$33 billion, including 2006 estimated net earnings of \$2 billion in 2006.⁶ These conditions put four major airlines into Chapter 11 and forced the industry to shed jobs and airplanes, slash capital spending, and take on massive amounts of new debt, just to survive. Through 2006, airlines cut more than 150,000 jobs, shed more than \$8 billion in annual labor costs and parked hundreds of airplanes. At its peak in 2004, industry debt is estimated to have exceeded \$107 billion, and most recently stood at approximately \$79 billion. In short, the airline industry as a whole remains in extremely fragile condition. Earnings in 2006 and projected earnings for 2007 are helping to revive the industry, but it is far from where it needs to be to weather the next exogenous shock or economic recession. In fact, only one U.S. passenger airline enjoys an investment-grade credit rating from Standard and Poor's. Moreover, the industry's recovery remains hostage to stable oil prices, as the recent spike in oil prices stemming from Iran's capture of twelve British sailors demonstrates. In short, the projected 2007 earnings would quickly disappear should oil and jet fuel prices surge for a sustained period of time.

⁶ By comparison, the industry earned only \$23 billion in 1995–2000, the industry's most profitable period ever. DOT has not yet released airline industry financial results for the fourth quarter of 2006.

Cost and Capacity Discipline Remain Critical

Assuming the industry recovery continues, airlines have many financial demands. These include repairing their balance sheets, funding fleet acquisitions to meet growing demand while reducing growth in emissions, improving wages and benefits for their employees—who have endured significant reductions since 9/11, funding airport development projects intended in part to improve customer service, acquire or upgrade ground service equipment to meet both operational needs and emissions reductions targets, modernize reservations and online booking systems to meet customer needs, and so forth. The point here is that as much as airlines might like to redirect financial resources at improving customer service—by hiring lots of new staff and deploying new equipment—they must act deliberately to make sure that all priorities, including those related to passenger safety, are met and that they do not lose control of their costs. Airlines simply cannot afford a “fix it at any cost” mentality.

The same holds true with respect to capacity. The industry was finally able to achieve a profit in 2006 largely because supply began to align with demand. Prior to that point, supply—seat capacity—outstripped demand and, as a result, revenue could not keep up with costs. While our members recognize that increased capacity could, perhaps, make planes less crowded and provide a cushion to accommodate passengers when their flights are canceled, the unfortunate truth is that this would greatly increase airline costs. Airlines either would have to raise prices, which is difficult to do in a highly competitive pricing environment driven by low-cost carriers, find new ways to cut costs—which could include more service cuts, or slip back into the category of money losing enterprises.

The Current FAA Funding System Hobbles the Airlines

As we have stated in previous testimony concerning FAA reauthorization, the current funding system for the FAA unfairly burdens commercial airlines. There is no correlation today between revenue collected and services consumed. Airlines pay well over 90 percent of Trust Fund revenues but drive less than 70 percent of ATC system costs. The result of this inequity is that airlines, and ultimately their customers, are heavily subsidizing other users of the system—corporate aviation users in particular. A cost-based usage fee system would correct this disparity and, in the process, free up significant resources for airlines that can be used for, among other things, improving customer service.

Conclusion

While commendable for its goals, the Bill is neither necessary nor prudent. Extreme weather conditions of the kind that struck in December 2006 and February 2007 are unusual, and DOT statistics demonstrate that, in fact, extreme delays are rare. And just as Congress anticipated when it enacted the Airline Deregulation Act, market forces have already caused airlines to change the way they prepare for, and respond to, extreme weather conditions and resulting delays and cancellations. Additionally, existing regulatory mechanisms are ensuring appropriate action by carriers and protect consumer interests.

As we all know, weather remains, by far, the chief cause of airline delays and cancellations. When weather hits, FAA slows down the system and airports often lose runway capacity. Because the existing ATC system is, for all intents and purposes, maxed out, the ripple effect on airline operations that results from ATC responses is enormous. Rather than layer on additional regulatory burdens that could prove costly and result in greater numbers of passengers being inconvenienced, we urge the Committee to pass legislation that will enable FAA to modernize the ATC system as quickly as possible. Expanding system capacity and putting technology in place that will allow better operations when weather hits is the most effective action for improving customer service.

The CHAIRMAN. I thank you very much, Mr. May.

And now may I recognize Senator Boxer?

Senator BOXER. Thank you.

Mr. May, I find your testimony incredulous. I'm stunned by your testimony. I don't know whether you travel—do you travel? Do you have a private plane or do you travel commercial?

Mr. MAY. I travel commercial, exclusively.

Senator BOXER. OK, good for you. So do I. And I can tell you, your testimony, to me, sounds like you're living in a dreamworld. I just find—I find your testimony even arrogant. You say you don't

always get it right, you get it right most of the time. Good. Thank goodness, yes, you do. And I think I've flown more than a million miles by now, because I got elected to Congress in 1982 and have been going back and forth ever since, and I'm a loyal flyer of United Airlines. You get it right most of the time. You should. You better. I mean, we're trusting you with our lives. So, good, you get it right most of the time.

But I say, when you don't get it right, on those few occasions you say it is, just a few occasions, then you ought to welcome the fact that we want to stop compounding the problem, and you ought to work with us, and you ought to say, "Good, sure, we're not afraid of a passenger bill of rights, Senator Snowe and Senator Boxer. We want to work with you."

You say that we set arbitrary deadlines. And, Mr. Mitchell, who represents business flyers—but none of them that I know today, sir, in your attitude toward our bill, if I might say that—"arbitrary deadlines," what does that mean? Is it an arbitrary deadline that we vote at 18? Yes, you might say it, but it's common sense. We figured if you can go to war, you should be able to vote. Most states, you can have a drink at 21. Is it too—is it arbitrary? Yes, I suppose you could say it is—21. We get Social Security either at 62, 65, or 70. Arbitrary? Yes, I guess you could say. Common sense, though, pretty much. Medicare at 65, you could argue that one. But whether it's marriage age or any other age or any other decisions you make in your life—when you tell your kid, "Come home a certain time or you're grounded"—there are no absolutes in life. But what Olympia and I have tried to do is put our heads together, listen to what people are telling us happen, look at your own customer first 12-point customer service commitment, which I ask unanimous consent to place in the record, and I will so do.

[The information previously referred to follows:]

Customers First 12 Point Customer Service Commitment

ATA members are committed to providing the highest possible level of service to our customers. Each participating airline has published a Customer Service Plan: Please consult your airline's Website for the particulars of its customer commitment. Copies of those plans have been provided to Congress and the Department of Transportation.

Each participating airline commits to:

1. *Offer the lowest fare available*—Each airline will offer the lowest fare available for which the customer is eligible on the airline's telephone reservation system for the date, flight and class of service requested.

2. *Notify customers of known delays, cancellations and diversions*—Each airline will notify customers at the airport and onboard an affected aircraft, in a timely manner, of the best available information regarding known delays, cancellations and diversions. In addition, each airline will establish and implement policies for accommodating passengers delayed overnight. A clear and concise statement of airlines' policies in these respects will also be made available to customers.

3. *On-time baggage delivery*—Each airline will make every reasonable effort to return checked bags within 24 hours and will attempt to contact any customer whose unclaimed, checked luggage contains a name and address or telephone number.

4. *Support an increase in the baggage liability limit*—The airlines successfully petitioned the Department of Transportation to increase the baggage liability limit.

5. *Allow reservations to be held or canceled*—Each airline will allow the customer either to hold a telephone reservation without payment for 24 hours or (at the election of the carrier) to cancel a reservation without penalty for up to 24 hours, in order to give customers an opportunity to check for lower fares through other distribution systems, such as travel agents or the Internet.

6. *Provide prompt ticket refunds*—Each airline will issue refunds for eligible tickets within 7 days for credit card purchases and 20 days for cash purchases.

7. *Properly accommodate disabled and special-needs passengers*—Each airline will disclose its policies and procedures for handling special-needs passengers, such as unaccompanied minors, and for accommodating the disabled in an appropriate manner.

8. *Meet customers' essential needs during long on-aircraft delays*—The airlines will make every reasonable effort to provide food, water, restroom facilities and access to medical treatment for passengers aboard an aircraft that is on the ground for an extended period of time without access to the terminal, as consistent with passenger and employee safety and security concerns. Each carrier will prepare contingency plans to address such circumstances and will work with other carriers and the airport to share facilities and make gates available in an emergency.

9. *Handle "bumped" passengers with fairness and consistency*—Each airline will disclose to a passenger, upon request, whether the flight on which the passenger is ticketed is overbooked, if, within the usual and ordinary scope of such employee's work, the information is available to the airline employee to whom the request is directed. Each airline will also establish and disclose to the customer policies and procedures, including any applicable requirements (such as check-in deadlines), for managing the inability to board all passengers with confirmed reservations.

10. *Disclose travel itinerary, cancellation policies, frequent flyer rules and aircraft configuration*—Each airline will disclose to the customer: (i) any change of aircraft on a single flight with the same flight number; (ii) cancellation policies involving failures to use each flight segment coupon; (iii) rules, restrictions and an annual report on frequent flyer program redemptions; and (iv) upon request, information regarding aircraft configuration, including seat size and pitch.

11. *Ensure good customer service from code-share partners*—Each airline will ensure that domestic code-share partners make a commitment to provide comparable consumer plans and policies.

12. *Be more responsive to customer complaints*—Each airline will assign a Customer Service Representative responsible for handling passenger complaints and ensuring that all written complaints are responded to within 60 days. Each airline will develop and implement a Customer Service Plan for meeting its obligations under the Airline Customer Service Commitment. Customer Service Plans will be completed and published within 90 days and will be fully implemented within 6 months. Airline implementation will include training for airline reservation, customer service and sales personnel to enhance awareness of the responsibilities involved in implementation of the Customer Service Commitment and Plans. The Airlines will publish and make available their Customer Service Plans: (i) on airline Internet websites; (ii) at airports and ticket offices (upon request); and, (iii) to travel and reservation agents.

Senator BOXER. And we came up with an idea. Some people said it was too weak, actually. We had a recommendation to add ventilation and medicine. I'm willing to look at that, for sure. But we've put together something that you should embrace, it seems to me, and work with us on, instead of fighting us and fighting the people who pay every day to fly. If it's so rare, then what's wrong about a simple bill that gives the pilot the flexibility. You used the word "flexibility." We give the pilot 100 percent flexibility, period. I trust pilots a lot. I worked with Bob Smith so that pilots could carry guns on the planes, if they were so trained to be air marshals, after 9/11. I trust them—a lot more than I trust some guy with a green eyeshade sitting in an office somewhere, saying, "Oh, boy, don't bring that plane back, we could lose X number of dollars."

You are dealing with real lives here. You sat next to two people here. How could you be so unmoved by what they said it's like?

I had a daughter trapped on a plane for about 4 hours. She called me from the airplane. She was desperate, because she had to get home to see her kid. She just wanted to know what was going on. I called the airline. No information. Zippo. Nothing.

These are human beings, treated in the worst possible way. I was so hopeful, when the Chairman said he was going to have this

hearing, that we could come together, rather than have a battle—again. And I just hope the Senate is going to treat its constituents with dignity. What if someone gets a heart attack on one of your airplanes because of the stress, or a stroke? What happens? Oh, then you'll be up here, saying, "Gee, Senator, I guess I was wrong. I should have given the pilot, you know, some discretion." But it could happen.

And I think this legislation is a modest step, because, you know what? I trusted you before. I was here. Guess what? I didn't fight you. I joined you. I said, "You're willing to do this 12-point plan. I trust you." Well, look at this. "We will properly accommodate disabled and special-needs passengers." And here, you have people who had special needs who couldn't even get to their medicine. They will—you "will meet customers' essential needs during long on-aircraft delays"—food, water, restroom facilities, medical treatment—your words. If I did this—I could be thrown out of the Senate if I said, "I pass this law, and I will uphold it," and I didn't uphold it. I don't know why you can't help us with this. "Insure good customer service from code share partners." "Be more responsive to customer complaints." And Ms. Hanni, who I admire so much, she didn't need this in her life, she just said, "I cannot put it out of my mind." Everybody does that, and we all have this, we move on. We say, "It was awful, let's not think about it." It's like after you give birth, you know, you forget about the pain and everything you went through.

[Laughter.]

Senator BOXER. And you just don't want to go back and remember the pain and the aggravation, because we're all optimists. But we have to fix this. And Mr. Mitchell says, "Fix it by getting new runways, getting more air traffic controls." Amen. I'm with you, sir. And we will work toward that, because, Senator Rockefeller is right, we don't have enough money. But we need to do that. And we will do that. But that's not tomorrow. We need to do this tomorrow. And I'm going to fight hard. And I know that Senator Snowe agrees. We're a team, and we're going to push this on every bill that we can to get this thing done, because it isn't right, it isn't fair. We backed off in 1999. We trusted you, sir. I don't mean you, personally—your industry. You put it in writing, and you didn't live up to it.

I have one question, for Ms. Hanni. Do you react the same way I'm reacting to Mr. May? I mean, not—it's not a personal—he may be a lovely gentleman, but, I mean, his attitude of—

[Laughter.]

Senator BOXER.—you know, "Leave us alone, this is ridiculous and arbitrary, and go away." Does this bother you?

Ms. HANNI. I feel furious inside.

Senator BOXER. Well, tell me about it a little.

Ms. HANNI. Well, I just get that, unless someone has experienced what we experienced, that it's hard for them to have the same visceral reaction that I have. And I feel it now whenever I hear another stranding story, because I know what it felt like to be in that situation and not know what to do, not know what to tell my children, my husband trying to keep me calm, other people discussing in the plane, "Maybe there's terrorism going on in the airport.

There must be some greater reason why we're being held than simply someone decided not to let us off the plane," when there were clearly gates available. And it is so troubling to me to hear these baseless arguments, basically, for something so simple and humane as what has been put together, that would protect us.

And the things that we witnessed that day from our plane, people walking their dogs on the tarmac, police cars going to planes and arresting people, ambulances going to planes to treat people on the tarmac, rather than allowing those planes to go into a gate and safely deplane the diabetic paraplegic with a colostomy bag on flight 534, and people flashing SOS signs out their windows—you know, tarmac rage was imminent on our plane, when our pilot decided against orders to take the plane in. And he told us, every few—you know, 45 minutes or so, what was going on, and that he was being refused a gate, even though there were gates. So, it was extremely confusing, troubling. I just don't think people's tolerances, for a variety of reasons, can handle it. And there was conversation of popping the emergency exits, just before he decided to pull the plane in. And I don't know—you know, it wouldn't have been safe for us to jump from the plane.

Senator BOXER. Well, the problem that's compounding it now is, of course, any action when you're in an airplane——

Ms. HANNI. Is arrestable.

Senator BOXER.—is deemed a hostile act.

Ms. HANNI. Correct.

Senator BOXER. And any one of those airline people could do something pretty desperate to stop you. So, it's sort of putting you in a very—extremely dangerous situation. Well——

Ms. HANNI. Yes. And the——

Senator BOXER. Yes.

Ms. HANNI.—flight attendants are in a dangerous situation. I have over 1,000 flight attendants that have e-mailed, saying that they want this bill to be passed. They are tired of being trapped with us in the planes.

[Laughter.]

Ms. HANNI. That's what they've said. They're scared.

They don't have any training to deal with that type of situation, beyond a certain amount of time. The hostility is entirely directed at them.

Senator BOXER. Right.

Ms. HANNI. And there are so few of them, in relationship to the number of passengers on the plane. Clearly, our flight attendant did not know what was going on, and said, "I just don't know why they're not letting us go to a gate. Maybe they're afraid that 1,000 angry passengers would be too much for the terminal after that many hours," because there were so many planes on the tarmac that needed to go in. It was—it was unbelievable. I—it was surreal, and we felt like aliens arriving——

Senator BOXER. Well, I was going to——

Ms. HANNI.—you know——

Senator BOXER.—say, the sense that I have, having just a little bit of this experience, but nothing like what you've had—which is a miracle, in itself—is that, Mr. Chairman the people there really lose their individuality and are viewed as sort of the enemy, in a

way, by the airline, that they have to just deal with them and shut them up and keep them quiet. And it's just—this isn't American. This isn't how we do things. Each of us has a story, each of us has a reason why we're on an airplane. Usually it's—very urgent reason or a happy reason or something. And we pay a lot of money for the privilege of getting that ticket.

Well, thank you. I am just more bound and determined to get this done than I've ever been before, so I wanted to make that comment.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Snowe?

Senator SNOWE. Thank you, again, Mr. Chairman.

I mean, the issue here is, Mr. May, that there is just no accountability on the part of the airlines. I mean, there aren't choices when you're sitting in an aircraft, enclosed for an extended period of time. It's inconceivable, as I said earlier, to be trapped in a plane, with no choices, not being able to move, not to be able to use the restroom. It goes on and on. And I think we've heard some of the stories here today, with Ms. Hanni and Mr. Chandran, and we've heard other graphic stories.

And listening to the Inspector General earlier, I'm somewhat surprised, Mr. May, that you would not have responded to the issues that were raised, because, if anything, he was describing an industry that is essentially retreating when it comes to customer satisfaction. In fact, I think that you need to respond, your industry needs to respond. And I realize they're going to be doing another report, but this was issued in November of last year, and it describes an industry that really is, at best, paying lipservice to some dimensions of customer service.

There's no choice. It's not as if you don't like the restaurant, you're going to get up and go to the next one. People make considerable investments. If I go to the store and I buy an appliance, and things don't work, I can take it back. There's really, essentially, no recourse. And it has—and, as I said, it has a reverberating effect. If you have a vacation, you know, that you lose days in which you've paid for, or a rental car. It goes on and on, not to mention family weddings or funerals. And when you're emplaned and entrapped, there's nothing that you can do.

Congress has a responsibility, in terms of public safety. We have an obligation in an industry that is regulated and controlled, you know, if you think about air traffic control, ground control, the infrastructure, the airports, publicly funded, passenger fees and taxes that are imposed by the Government. So, it is a controlled and regulated industry. In fact, not too long ago, the FAA—with respect to the FAA reauthorization, I understand the industry, you know, would like to have a new aviation safety account, to be primarily funded out of the General Fund of the Federal budget, because it is a public safety issue, as the industry indicated.

This is an issue of public safety. You know, this isn't the lottery, well, you know, 4 hours, 5 hours, maybe 6 hours. Have you ever sat on a plane when they told you specifically—and I understand the exigencies with weather conditions. But what we heard here earlier, that the delays attributed to weather were 5 to 10 percent

of the overall flights—so, the question is all the other issues, and it's exercising good judgment. And the pilot was constrained, and when he finally was so exasperated, he went back to the airport, the American Airline pilot. He finally—he just finally decided to do it, irrespective of what was being handed down from within the company.

So, I think that that is the issue here today. We've got a matter of public safety. This is, you know, a minimal standard that ought to be adhered to. And that's what we're—that's what we have to face, because we don't want an incident that results in a death and that we're back here discussing that. I don't want that to happen. Barbara doesn't want that to happen. That's why we're—I mean, that's why we've taken this approach, because it is a matter of life and death; it's a potentially life-threatening situation.

This isn't an issue of marketing. This is an issue of public safety. And that's why we're compelled to introduce this legislation, because obviously the industry is not engaged in self-policing, and that is certainly evident with the report that was issued by the Inspector General that was released in November of 2006. So, this isn't just an old report. And February was the second highest rate for delays ever. And sure, some were attributed to weather, but there were a lot of other exigencies, as we all know—we've heard it all—from paperwork to lost crews, it goes on and on. So, we understand all that. The question is, is accountability.

And what disturbs me more than anything else is that, above and beyond these tragic situations, we find that the industry is not adhering to its own, you know, Passenger Bill of Rights, the one that it had promised to adhere to, back in 1999 and 2000. The fact is, as the IG said, and I'll say it again, only 5 of the 13 members of your association are doing anything with respect to quality assurance or performance measurements systems. There are no audits of customer service protection plans, not looking at what's happening with delays and cancellations, and going to the gates and understanding, you know, whether or not they're providing timely announcements, and on and on it goes. And if you say that—it's really an abysmal report, in describing the industry. So, the industry is not policing itself.

And I think it really has—you know, for all practical purposes, has really given tremendous disregard to customer service. And that's what, I think, you know, is something that we obviously have to address. But in this specific instance, it is critical. We have an obligation and responsibility, because billions and billions of dollars are spent by the Federal Government and the Federal taxpayers to support the industry, because it's in our national interest to do so, and because of matters of public safety.

So, I don't understand why you would think that being entrapped on a plane without having the access to basic necessities is something that, you know, is warranted, and why any instance that has already been described here today would have happened under any circumstances, the kind of training that has not been provided and the kind of standards established by the industry itself, so it would avert these types of situations, irrespective of the reason.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I've learned, a long time ago, that when Senator Snowe and Senator Boxer get involved and latch onto an issue, it will be resolved.
[Laughter.]

The CHAIRMAN. I'd like to thank all of you for appearing today to testify. It's been very helpful. I know that it has been difficult in some cases, but I can assure you that the Committee will give your testimony very serious consideration.

Thank you very much.

[Whereupon, at 4:35 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Thank you Mr. Chairman for holding this important hearing. There have been some high profile delays recently in which passengers have been stranded on planes, calling into question consumer protections within the airline industry. In January, an American Airlines flight bound for Dallas/Ft. Worth was stuck on the runway for 9 hours in Austin. In February, passengers on a JetBlue flight departing from Kennedy Airport were trapped on the plane for 11 hours. In both cases, the airlines were unable to get passengers back to the gate after it was obvious that these flights would be canceled. Passengers lacked not only adequate food and sanitary conditions, but just basic information as well.

Perhaps the most striking aspect of these delays is the lack of Federal laws and regulations to protect passengers. Since 1999, the airlines have been operating under a voluntary agreement to address customer service issues including delays, complaints, lost baggage, and other issues. I think it's pretty clear that this voluntary approach is not working. In fact, it has allowed the airlines take a lackadaisical approach to their responsibilities and the Department of Transportation to skirt any serious oversight of customer service issues.

I personally believe Congress should revisit the idea of a "Passenger Bill of Rights" first proposed during the Clinton Administration and provide aggressive oversight to ensure that air travelers are protected when the airlines fail their customers. I know the airlines oppose any regulation in this area and prefer a market-based solution, but it is clear to me that "voluntary enforcement" is not the answer. The airlines should not be policing themselves. There is no excuse for keeping passengers on the runway for 11 hours, and Congress needs to take action to solve these problems.

I look forward to questioning the witnesses and working with the Chairman and Co-Chairman on these issues. Thank you.

PREPARED STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Chairman Inouye/Rockefeller, Vice Chairman Stevens/Lott, thank you for holding this hearing today. I would also like to thank our witnesses for their testimony. Nearly everyone who has ever flown has a disaster story of their own. Some are worse than others. Some of the stories that are being highlighted at today's hearing are among the worst.

Senators are heavy users of our aviation system. I try to fly home to South Dakota every weekend to see my wife and one daughter still at home. I'm sure some of the members of the Committee think their flight delay and cancellation stories rank right up there with the worst of them. Unfortunately for the airlines, we get to see the good and the bad in their industry on a weekly basis.

At first glance, the recent horror stories might seem like aberrations in an otherwise decent air service system. But if you look at the bigger picture, from say—the 30,000 foot level (pardon the pun)—the story remains the same. Flight delays are not decreasing. Airline customer service is not improving.

Airlines on-time arrival rate according to the Department of Transportation was 73.1 percent in January 2007, down from 78.8 percent in January 2006. 588 flights waited on the tarmac for more than 2 hours in January 2007. This is nearly twice as many as January 2006, which had 298.

The annual Airline Quality Rating report was released on April 2, 2007. It found that on-time performance worsened across the industry with 75.5 percent flights arriving on time in 2006 compared with 77.3 percent in 2005. More passengers were bumped from flights and more bags were lost or stolen last year than in 2005 as well. Perhaps the most disappointing statistic from the report was that despite worse performances by the airlines in 2006, complaints held steady. There were ap-

proximately 0.88 complaints for every 100,000 passengers, similar to 2005. Experts agree that customers are lowering their expectations.

The airlines are arguing that further government regulation is not the answer. They lay out that airline operations are extremely complex, and that new, cumbersome regulations will not give them the flexibility they need to provide the best service. They also argue that the current market forces are strong enough to change airline behavior.

I believe the jury is still out on their first point, but the second point is simply not the case. Passengers need more information about their flight options. If relevant airline performance information was presented to consumers when purchasing tickets and receiving their tickets, consumers would be in a better position to use this information to make educated travel decisions.

It is for this reason that I have introduced the "Informed Air Traveler Act" today that would equip passengers with more information about their flight options. Passengers should be able to easily access on-time data, cancellation rates, and other information on the flights they are thinking about taking. Better informed travelers would make better decisions about which air carrier they will choose to get them to their destination in a timely manner. That should mean more competition as well. Airlines will have a greater incentive to improve their on-time performance if they know their customers will have this information and will be making purchasing decisions based on it.

I am introducing this bill to get the debate going over what might be the best course of action necessary to reinvigorate competition among the airlines for not only price, but also the quality of service they provide. I hope we can make changes that will help turn around the statistics that have been offered up by me and other members of the Committee here today.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
MICHAEL W. REYNOLDS

Question 1. There are reports that when flights are canceled, it is taking much longer for airlines to accommodate passengers on later flights than it has in the past. In some cases it is reported to take up to 3 days for passengers to find alternative flights.

- a. Why is it taking longer to find alternative flights for displaced passengers?
- b. What can the airlines do to address this growing problem?
- c. What can the Department of Transportation do?

Answer. We have occasionally received anecdotal reports that it is taking longer to find alternative flights for passengers whose flights have been canceled. We are not aware of specific data indicating to what extent this problem has worsened. However, record load factors on passenger airlines (exceeding 80 percent), reductions in domestic capacity, and layoffs of customer service agents prompted by persistent financial losses for legacy carriers since 2001 all obviously contribute to the problem in re-accommodating passengers whose flights are canceled (or who miss their connecting flights). Until these problems are corrected, it is unlikely that the airlines will materially improve their performance in this regard. Mandates such as requirements that airlines accommodate their competitors' passengers, that they provide additional compensation, or maintain additional crew are not likely to work and would in any case impose massive costs on the industry. The Department is currently examining ways to ameliorate this problem, among other things, through more comprehensive disclosure by airlines to their customers of their rights in the event of a cancellation.

Question 2. One proposal during the last round of hearings on this issue was to improve services for notifying travelers of delays. Nearly all airline travelers today have a cell phone, and some airlines already send a message to individual passengers telling them whether or not a flight is on time. How many airlines have a system in place to notify passengers of delays?

Answer. The table below includes responses from the largest U.S. carriers regarding notification systems:

Carrier	Have system for notifying passengers about expected delays?	Current plans or contemplated initiatives to make more seats available to reroute passengers whose flights were canceled?
United	<p>We proactively contact passengers via the contact info provided with their reservation.</p> <p>Also, passengers can sign up for a UA system called "EasyUpdate" which will notify them of schedule irregularities via telephone, e-mail, text message, pager, or fax.</p>	<p>Will do indirect reroutings and, when necessary, rerouting on other carriers with whom UA has an agreement (243 carriers worldwide).</p> <p><i>"A new initiative activated by our Inventory Management division provides for additional seat inventory for rebooking during irregular operations. This is possible due to higher customer no-show rates during the same time and has proven to be very successful during recent irregular operations. From April 3 through April 25, 2007, we were able to accommodate an additional 3,614 customers during irregular operations."</i></p> <p>Also, UA's automated system for rebooking passengers affected by canceled flights and potential misconnections is being enhanced to permit less-direct routings and service on other carriers.</p>
Continental	<p>Passengers can sign up to receive voicemail or e-mail messages about schedule irregularities.</p> <p>If passenger does not sign up, CO contacts passengers via the contact information in the reservation. However, <i>49 percent of CO reservations arrive via third parties (travel agent, Expedia, etc.), and some of them don't provide passenger contact information for competitive reasons.</i></p> <p>By the end of the year CO will begin asking every passenger no later than check-in for a means of contact that the carrier can use for the rest of the passenger's trip.</p>	<p>CO strategically "pre-cancels" flights likely to be affected by severe weather.</p>
Northwest	<p>Passengers affected by a canceled flight are rebooked by an automated system and receive phone messages from another automated system.</p> <p>Passengers can sign up to receive notice of schedule irregularities via e-mail, pagers, or PDAs.</p>	<p>"Northwest has not experienced any material difficulty in rerouting passengers affected by a flight irregularity. Because this has not been a problem for us, we have no plans or proposed initiatives to modify our current procedures." Typical rerouting on NW and other carriers with whom they have agreements</p> <p>In the "rare" instance when it is appropriate, NW may substitute a larger aircraft in order to accommodate passengers rerouted from a canceled flight</p>
Delta	<p>"Delta Messenger" system: passengers who sign up are advised of flight delays and cancellations via phone, pager or e-mail (passenger's preference). Goal is to do so 3 hours prior to flight.</p>	<p>Typical rerouting on DL, DL codeshare carriers, and other carriers (in that order). DL will "often" substitute a larger aircraft on the next flight to accommodate passengers affected by a schedule irregularity.</p>
Southwest	<p>"Flight Status Messaging": Passengers who sign up will receive a text messages to his/her cell phone, pager, PDA or e-mail address.</p> <p>Before the December holidays Southwest hopes to have a system that will automatically call passengers affected by a schedule irregularity.</p>	<p>*Construct unpublished connections on existing flights.</p> <p>They add "flag stops" to nonstop flights when necessary to accommodate passengers affected by a schedule irregularity.</p>

Question 3. Is there a system in place that tracks delays and their causes, and notifies passengers of the reason so they can seek compensation if appropriate?

Answer. Pursuant to 14 CFR Part 234, the largest U.S. carriers are required to file monthly on-time performance data with the Department, which data includes one of five causes of delay: weather; carrier (*e.g.*, mechanical or crew); National Airspace System (*e.g.*, FAA ground hold and airport construction); security (*e.g.*, closing of a concourse for security-related purpose); and late arriving aircraft. Including two carriers that voluntarily file on-time performance data, a total of 20 carriers file such data. That information is available to the public on the website of the Department's Bureau of Transportation Statistics. There is no requirement that carriers notify passengers directly of the cause of a delayed flight. However, most carriers that have instituted customer commitments promise to update passengers about the delay status of their flights.

Question 4. Has the DOT been looking at any options to provide consumers with better information about the history of their flights in the event they are chronically delayed or canceled?

Answer. Yes. Based on the on-time reporting required of carriers under 14 CFR Part 234, the Department's Bureau of Transportation Statistics maintains historical data regarding the on-time performance of all flights operated by the reporting carriers, including the number of canceled and diverted flights. On-time information by flight number, including the percentage of flights that are at least 15 minutes late, the length of delays and the percentage of cancellations, is available to the public on the website of the Department's Bureau of Transportation Statistics. Under Part 234, carriers that are required to file on-time performance data with the Department are currently required to advise passengers, upon request, of the on-time performance of any flight about which the passenger is inquiring, whether or not it has been chronically late or canceled. In addition, in its monthly *Air Travel Consumer Report* (ATCR), the Department identifies specific flights that arrived late at their destination at least 80 percent of the time and provides general information regarding the percentage of each carrier's total flights that arrived late at least 70 percent of the time. The ATCR also provides an hour-by-hour breakdown of on-time arrival performance at the Nation's major airports so that consumers can see the best and worst times to arrive at these destinations. The ATCR is available on the Department's website. We are in the process of reviewing various ideas and proposals relating to airline consumer data, but we do not have any formal proposals at this time.

We are considering improvements to the data reported by the airlines under Part 234. The Bureau of Transportation Statistics held a public meeting on June 20 to receive comments on how flights that depart the gate, return to the gate and depart again should be reported. BTS also asked for comments on reporting tarmac times for flights that are subsequently canceled and reporting additional information on diverted flights. The docket (RITA-2007-28522) remains open for comments until about the end of July.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO
MICHAEL W. REYNOLDS

Question 1. Many of the customer service issues addressed at the hearing are governed by a voluntary industry-wide agreement in 1999. It would help if you could clarify the Department of Transportation's (DOT) role in preventing incidents like the American and JetBlue delays and its authority to protect passengers from poor service and mistreatment. Does the DOT have the authority to require an airline to return passengers to the gate during delays or allow them to exit in some other manner? If yes, why didn't it intervene with American and JetBlue? If not, should it?

Answer. Yes, the Department has the authority to require an airline to return passengers to the gate or permit them to exit the aircraft in some other manner during a delay, but there is currently no rule covering such situations. The Department would be required to pursue any such requirements through a rulemaking proceeding. Any such rule would have to take into account the logistical issues created by a requirement of this sort including the possibility that it would exacerbate delays for passengers who do not desire to de-plane. The Department believes it is important that airlines live up to the commitments made several years ago to meet passengers' essential needs (food, water and access to working lavatories) during prolonged on-the-tarmac delays. Secretary Peters has asked the Department's Inspector General to investigate the American and JetBlue situations and to provide

her with recommendations. We are awaiting his report, including any recommendations, to determine if rulemaking might be in the public interest.

Question 1a. Can you describe the Department's response to the American Airlines and JetBlue incidents?

Answer. In response to the American and JetBlue incidents, Secretary Peters asked the Department's Inspector General to investigate the situations and provide her with recommendations.

Question 1b. Was the DOT or Federal Aviation Administration (FAA) aware that these planes were sitting on the runway?

Answer. Yes, the FAA Air Traffic Controllers were aware that the American and JetBlue aircraft were on the respective runways involved.

Question 1c. Was there any discussion about intervening?

Answer. Absent extraordinary circumstances, such as those affecting the safe operation of a flight, it is not the Department's, including the FAA's, practice to intervene in a carrier's decision about whether to maintain its aircraft on a tarmac waiting for a break in inclement weather so that it could transport its passengers to their ultimate destination.

With respect to JetBlue, the FAA's Air Traffic Control System Command Center and local JFK facility contacted JetBlue to determine whether they required assistance. In these situations, the FAA can offer assistance in the form of reprioritization of flights and revised traffic flow management strategy. JetBlue did not avail themselves of this assistance.

The same was true for American Airlines. They also elected not to avail themselves of the services that could have been provided by the FAA.

Question 1d. Did the DOT touch base with airline officials and express concern?

Answer. A decision about whether or not to stay on the tarmac awaiting a break in the weather in order to take off is generally a matter within the purview of each individual carrier. The FAA intervenes in such matters only if necessary to preserve safety or system efficiency. Subsequent to the incidents, the Department contacted each carrier and asked for an explanation of the respective incidents.

Question 1e. Can the DOT fine American and JetBlue for these inexcusable delays? If so, will it?

Answer. No regulation prohibits a carrier from deciding to maintain its aircraft on a tarmac while waiting for a break in inclement weather so that it can transport its passengers to their ultimate destination. Therefore, neither carrier violated any rule that would give rise to a civil penalty. Air transportation is subject to conditions of carriage that the airlines must disclose to their passengers; carriers that violate these conditions can be held accountable for breach of contract.

Question 2. In his written testimony, the DOT Inspector General Scovel concludes that the Department has not done enough to respond to passenger complaints. Specifically, as a part of a 2006 review, he explains that:

DOT was using its additional resources to oversee and enforce air travel consumer protection requirements with a focus on investigations and enforcement of civil rights issues, including complaints from passengers with disabilities. But, when DOT discovered violations and assessed penalties, it almost always forgave the penalty if the air carrier agreed to mitigate the conditions for which the penalty was assessed. DOT's follow-up monitoring of compliance with these conditions was limited, and in some cases there was no follow-up monitoring at all. In recent years, DOT has not conducted on-site compliance reviews, relying instead on air carriers' self-certifications and company-prepared reports submitted without supporting documentation.

Is this criticism valid? Is the airline industry policing itself?

Answer. We believe this testimony creates a misimpression as to how these matters have been, and continue to be, handled. In a deregulated environment it is initially the carriers' responsibility to provide acceptable levels of customer service. However, the airline industry has not been left to police itself. If the Department has evidence that a carrier or the industry is engaged in an unfair or deceptive practice, it may through individual enforcement actions brought by its Aviation Enforcement Office, or through industry-wide rulemaking, where appropriate, act to prohibit such conduct. The Aviation Enforcement Office does not forgive civil penalties assessed a carrier solely because "the carrier agree[d] to mitigate the conditions for which the penalty was assessed." Rather, in the typical case resulting in a consent order, the carrier must come into compliance *before* the Aviation Enforcement Office will agree to settle the violations in question. While, as part of a settlement of violations the Aviation Enforcement Office often suspends up to 50 percent

of the assessed civil penalty for a period of time, it is important to note that the consent orders require that *before* the suspended portion of the assessed civil penalty can be ultimately forgiven, the carrier must have first paid the portion of the assessed penalty that was due and have committed no additional violations of a similar nature over the 12–24 month period following the issuance of the order. In all consent orders, carriers are required to cease and desist in perpetuity from the conduct that gave rise to the penalty. Some consent orders contain “offsets” in which a carrier agrees to take remedial action above and beyond that which is required by law in exchange for a reduction in the portion of the assessed civil penalty that would otherwise be paid to the government.

Through these types of settlements of potential violations, the Aviation Enforcement Office seeks to provide carriers a strong incentive to comply with Department requirements and to improve airline customer service instead of merely requiring civil penalties to be paid into the U.S. Treasury. While the Aviation Enforcement Office’s follow-up monitoring of carrier compliance with enforcement orders has been more limited, due to both monetary and personnel resource limitations, than the Inspector General felt appropriate, importantly he did not note a single case where a carrier had failed to implement the compliance matters that it had certified to the Aviation Enforcement Office as having been completed. As described below, the Aviation Enforcement Office has nevertheless taken steps to improve its monitoring of carrier compliance.

Question 2a. Can you explain what you are doing to address these deficiencies?

Answer. As stated above, we believe that the Inspector General’s statement gives the wrong impression regarding our actions in this area. Nevertheless, the Aviation Enforcement Office has revised its monitoring efforts, including implementing a computerized tracking system to improve its monitoring of compliance with enforcement orders. In addition, that office has a plan to conduct on-site compliance reviews, resources permitting, of carriers in connection with its review of chronically delayed flights.

Question 2b. Would the Department support new legislation to improve service within the airline industry?

Answer. The Department would need to have an opportunity to review such legislation before being able to comment. The Department generally believes that our focus should be on ensuring that consumers have complete and adequate information regarding airline service commitments—and their remedies in event of failure to provide promised services—at the point of purchase such that marketplace forces incentivize airlines to improve.

Question 2c. Would it support enacting the 1999 voluntary agreement into law?

Answer. The customer commitments are already part of the contract of carriage of most airlines and are therefore enforceable by consumers to the extent that carriers fail to abide by their terms.

Question 2d. Would Secretary Peters support a bill requiring the airlines to return passengers to the gate after a 3-hour delay?

Answer. Secretary Peters is awaiting the report of DOT’s Inspector General regarding the American and JetBlue situations, including any recommendations he might make, to determine what if any action might be in the public interest.

Question 2e. Six months from now, absent Congressional intervention, what changes will the Department have implemented to improve oversight over customer service issues?

Answer. The Department’s Aviation Enforcement Office has a number of pending enforcement cases involving consumer protection matters that should be completed by then and anticipates opening many more within the next 6 months. In addition, following receipt of the Inspector General’s report, the Department will consider what other measures are needed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
MICHAEL W. REYNOLDS

Question 1. In the early 1990s, the U.S. Supreme Court made it clear that the U.S. Department of Transportation and not State Attorneys General have the authority to pursue unfair and deceptive practices and unfair methods of competition with respect to an air carrier or ticket agent. In your testimony, you cite a section of U.S. Code that addresses this subject (49 U.S.C. 41712). To paraphrase, the Secretary may begin an investigation based on a complaint of a U.S. or foreign air carrier, ticket agent or on the Secretary’s own initiative if it is in the public interest. If the Secretary finds that a party is engaged in an unfair or deception practice,

the Secretary shall order them to stop. Under Secretary Peters, how many investigations have been initiated under this section of the U.S. Code? How many have been completed?

Answer. Since September 30, 2006, the date Secretary Peters was confirmed by the U.S. Senate, at least 80 cases involving potential violations of 49 U.S.C. 41712 have been opened by the Department's Office of Aviation Enforcement and Proceedings. Additionally, since Secretary Peters' confirmation, the Aviation Enforcement Office has continued or completed work on numerous other cases involving potential violations of section 41712 that were opened before her confirmation.

Question 2. Of the total, how many of the investigations were started at the Secretary's initiative? How many of these investigations involved airline consumer complaints?

Answer. The Department's Office of Aviation Enforcement and Proceedings is responsible for instituting investigations involving potential violations of 49 U.S.C. 41712. Many resulted in whole or in part from consumer complaints but records are not kept in this regard.

Question 3. Are the results of these investigations public? If so, outside of what the Secretary asked Mr. Scovel to look into, could you provide me with an example where the Department initiated an investigation involving consumer complaints and what the resulting remedy was?

Answer. The results of investigations that have been completed are publicly available. An example of an enforcement action initiated due to consumer complaints involves the Enforcement Office's investigation and enforcement action against Ritetime Travel and Tours, which stranded hundreds of charter passengers in Nigeria and the United States when it failed to pay for charter flights as promised. That investigation, begun as a result of consumer complaints, resulted in two consent orders to cease and desist from violations of the Department's charter rules: one against World Airways assessed civil penalties totaling \$350,000; the other against Ritetime and its principal assessed civil penalties of \$220,000 and banned the principal from involvement with public charter operations for 1 year.

Question 4. Should the current rules be changed to allow the Secretary to initiate investigations based on airline consumer complaints?

Answer. There is no need to do so. The Department already has statutory authority and rules in place that permit investigations based on consumer complaints.

Question 5. In your testimony, you say that the 49 U.S.C. 41712 is enforceable but violations can be difficult to demonstrate. How so?

Answer. Enforcement actions based on section 41712 require the Aviation Enforcement Office to demonstrate that the conduct in question amounts to an unfair and deceptive practice. Proving violations of this standard remains, in the absence of an specific regulations proscribing certain conduct, highly fact specific. Because the statute requires the carrier to be engaging in a course of conduct that amounts to an unfair or deceptive "practice," such cases require extensive investigation to prove violations. Enforcement investigations that are not based on existing regulations are therefore very resource intensive and the outcome is not assured.

Question 6. If the Secretary finds a carrier is engaged in an unfair or deceptive practice, outside of ordering them to stop, what authority under current law does the Secretary have to penalize the carrier for its actions?

Answer. Pursuant to 49 U.S.C. 46301, carriers are subject to civil penalties of up to \$25,000 per violation and, in the case of a continuing violation, \$25,000 for each day each such violation continues.

Question 7. Mr. Scovell testified that if a carrier agrees to fix violations discovered by the Department, the Department, as a matter of practice, has not assessed penalties against the carrier. That does not seem as much of a deterrent. It seems to me that the Secretary may need explicit authority to penalize parties found to be in violation. Do you agree?

Answer. The Department already has authority to penalize parties found to have violated applicable statutes or Department regulations and orders and its Aviation Enforcement Office uses that authority vigorously. The Aviation Enforcement Office has *never* had a practice of not assessing a civil penalty in an enforcement order against a carrier if the carrier agrees to fix the violation in question. Between October 2006 and May 2007, cases brought by the Aviation Enforcement Office have resulted in more than 15 consent orders directing carriers and travel companies such as air charter brokers and travel agencies to cease and desist from further violative conduct and assessing them a total of almost \$1.5 million in civil penalties. In each of those cases the Aviation Enforcement Office demands that the airline or other

respondent agree to cease and desist from future violations. A civil penalty was not assessed in only one of those cases.

The Aviation Enforcement Office, on occasion, may close a matter without seeking civil penalties or with only a warning, where appropriate, such as where the company involved is a small business (a factor Congress requires be taken into account) and/or where the violation is inadvertent, minor or an isolated instance and the matter is corrected immediately or resolved to consumers' satisfaction. Between October 2006 and May 2007, the Enforcement Office issued 25 warning letters to carriers and travel companies. Thus, with the exception of these limited circumstances, the Aviation Enforcement Office seeks an enforcement order when it can prove violations and in those cases it obtains enforcement orders that invariably include civil penalties even in instances where a carrier agrees to correct a violation.

There has been some misunderstanding regarding the Enforcement Office's use of forgiveness provisions and offset provisions in connection with its settlement of enforcement cases. The Aviation Enforcement Office does seek to provide carriers every incentive to comply with the law and Department regulations. Moreover, it seeks to have carriers provide services, beyond what is required under law or Department rules, that are beneficial to consumers. In this regard, enforcement orders often include a provision whereby one-half of an assessed civil penalty is paid and the other half is suspended and will ultimately be forgiven after a period of time, usually one or 2 years, if the carrier commits no further violations during that time period. Carriers subject to this form of order thus have an additional incentive to achieve future compliance. Other enforcement orders seek to obtain from carriers services or benefits to consumers that are above and beyond what would be required under existing law and Department rules. For example, although there is no requirement that carriers provide civil rights training to their employees, several recent consent orders required that individual carriers expend as much as \$1,500,000 in such efforts in lieu of civil penalties. Additional services or benefits are also agreed upon as offsets to civil penalties assessed and otherwise due and payable. Thus, to the extent, carriers are able to expend funds toward those agreed upon matters, the unexpended funds would be paid to the U.S. Treasury in the form of a civil penalty.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
HON. CALVIN L. SCOVEL III

Question 1. In your testimony, you state the DOT, through its office of the General Counsel, should take a more active role in and increase scrutiny of airline customer service issues. What additional activities do you propose, and how would they address the various airline operational problems that have occurred over the past several months?

Answer. There are at least two actions that the Department can undertake immediately to address the various airline operational problems that occurred this past winter. First, the Department's Office of Aviation Enforcement and Proceedings (OAEP)—in collaboration with FAA, airlines, and airports—should review incidents involving long, on-board ground delays and their causes; identify trends and patterns of such events; and implement workable solutions for mitigating extraordinary flight disruptions.

Second, to provide a better sense of the magnitude of long, on-board delays, the Department should require that each air carrier's monthly Airline Service Quality Performance Report include gate departure times when an aircraft returned to the gate, since some carriers report initial gate departure times and others report a second gate departure time. Carriers should also report gate departure times when a flight is ultimately canceled, which they are not currently required to do. The Department is examining these reporting issues; DOT officials met with industry groups and airlines on June 20, 2007, to discuss better ways of reporting flight delays caused by cancellations and diversions.

Question 2. I understand the difficulty in determining a cut-off time at which passengers who choose to deplane are permitted to get off the aircraft. In these cases of extreme delay, I am told that there is often a credible expectation by the pilots, the airline, and air traffic controllers that the flight will be able to leave within the next ½ hour, but that time can extend to several hours because of a snowballing sequence of events. From an operational standpoint, what would be the process for permitting a plane to return to a gate to deplane passengers while still retaining its place in line for take off?

Answer. The process for permitting a plane to return to a gate to deplane passengers while still retaining its place in line for take off is properly within the pur-

view of the Federal Aviation Administration (FAA). FAA has operated for many years under a “first come, first serve” rule when it comes to the departure sequence. However, the standing rule has been that the plane must go to the end of the queue if it needs to return to a staging area to de-ice or to a gate to deplane passengers.

There are some exceptions. Airlines have what they call “advocates” in the air traffic control tower who may be able to negotiate on a one-time basis a return to a higher place in the queue; but generally, the aircraft goes back to the end of the queue. As far as regulatory barriers, FAA certainly possesses the ability to change its current rule.

Question 3. Understanding that luggage would be an obvious problem, what is the feasibility of allowing some sort of ground transportation, such as a bus, out to a plane waiting in line to pick up passengers wishing to deplane because of an extended delay?

Answer. The practice of using ground transportation, such as portable people movers or buses, to pick up passengers wishing to deplane because of an extended delay exists at all large and medium-sized airports and probably at many smaller commercial airports. Passengers were deplaned via ground transportation at some airports in the December 2006 incident involving American Airlines and the February 2007 incident at JFK involving JetBlue and other airlines. Some airlines operate their own ground transportation while others contract this service with a third party or request assistance from airports that operate their own ground transportation. Of course, deplaning passenger in this way would be highly safety dependent and would depend on the passengers’ conditions and the ability of ground personnel to move about safely under all conditions, especially in severe weather conditions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO
HON. CALVIN L. SCOVILL III

Question 1. Can you describe the scope of your investigation into the American Airlines and JetBlue delays?

Answer. Our review of American Airlines and JetBlue Airways, which was requested by Secretary Peters, focuses primarily on the events that occurred on December 29, 2006, at Dallas/Fort Worth International (DFW) and Austin-Bergstrom International Airports and on February 14, 2007, at JFK involving long, on-board ground delays. We are examining whether passengers’ essential needs were met; especially those who were stranded aboard aircraft on the airport tarmac, in some cases, for 9 hours or longer. We are also reviewing what actions American Airlines and JetBlue Airways have taken to prevent a recurrence of such events. We can report that American and JetBlue have revised their operating practices for mitigating long, onboard delays. For example, American instituted a new policy designed to prevent onboard delays from exceeding 4 hours. JetBlue also set a time limit of 5 hours maximum duration for any long, on-board delay away from a gate.

Question 2. Did American and JetBlue violate any Federal regulations? What authority does the Department have to penalize them?

Answer. Based on our review of the events of December 29, 2006, and February 14, 2007, we are not aware of any Federal regulations that American Airlines or JetBlue Airways violated, including violations of access for air travelers with disabilities. The Airline Customer Service Commitment provision dealing with “meeting passengers’ essential needs during long, on-board delays” is not governed under the Department’s existing air travel consumer protection rules, so the Department cannot penalize the airlines for non-compliance with the provision.

Question 3. The airlines claim that it is difficult to bring passengers back to a gate when there are delays. Is this true? Are you investigating the availability of gates at Dallas/Ft. Worth and Kennedy airports to determine if American and JetBlue could have brought their passengers back to the terminal earlier?

Answer. There may be situations or conditions that make it difficult to bring passengers back to a gate during long, on-board delays. What we identify as problems, mainly, are the physical layouts of the airports. Some airports; by virtue of their location, design, and more modern age; may be able to safely accommodate this type of aircraft movement. Other airports, because they are much more crowded and narrow, may not be able to accommodate aircraft moving about in this way or guarantee passenger safety.

In our review of the American Airlines and JetBlue Airways incidents, we examined whether gate availability was a factor in passengers being stranded aboard aircraft for extended periods of time. For American Airlines at DFW on December 29, 2006, gate availability was not a factor, and the few long, on-board delays that

American's passengers experienced there resulted from a series of ramp closures due to lightning, which effectively shut down the airport for extended periods of time.

On that same day at Austin-Bergstrom International Airport, a combination of factors resulted in American's passengers experiencing long, on-board delays, including gate availability, staffing shortages, and communications breakdowns between flight crews and American's local dispatch office at the airport. At one point, the airport made a gate available for 1 of American's 11 diverted flights, but American did not have the ground crew available to direct a flight safely to the gate.

For JetBlue Airways at JFK on February 14, 2007, gate availability was the primary factor in passengers experiencing long, on-board delays. JetBlue operates 21 gates at JFK and at one point during the day had 52 aircraft scattered around the airport. JetBlue called other airlines, including foreign airlines, to see about available gates, but no gates were available. The airport also unsuccessfully tried to assist JetBlue in finding gates for its flights. Based on our review of the events of that day, it appears that the airlines and airports were trying to help each other; however, the severe weather hampered much movement of aircraft on the airfield.

Question 4. Do you believe the voluntary agreement governing airline service is working?

Answer. There are certain areas where the Commitment provisions are working well but the greatest progress is not directly associated with whether a flight is delayed or canceled. These areas are: quoting the lowest fare, holding non-refundable reservations without penalty, responding in a timely manner to complaints, and paying larger sums for lost luggage. However, as we found in our 2006 review of selected Commitment provisions, the airlines must refocus their efforts on airline customer service by resuming efforts to self audit their customer service plans, emphasizing to their customer service employees the importance of providing timely and adequate flight information, disclosing to customers chronically delayed flights, and focusing on the training for personnel who assist passengers with disabilities.

Question 5. Should it be mandatory under Federal law?

Answer. Currently, the debate is over the best way to ensure improved airline customer service: either through voluntary implementation by the airlines, legislation, additional regulations, or some combination of these. This is clearly a policy issue for Congress to decide. As it did in 1999 and 2001, Congress is again considering whether to enact a "passenger bill of rights," with legislation pending in both the House and Senate.

Question 6. Do you think a "Passenger Bill of Rights" is a good idea?

Answer. Many of the provisions of the Airline Customer Service Commitment are already governed under existing Federal regulations, such as baggage liability limits, proper accommodations for passengers with disabilities and special needs, prompt ticket refunds, and denied boarding compensation. There are also provisions that Federal regulations require to be in the airlines' contracts of carriage, such as disclosing policies for flight cancellations and ticket refunds.

We are not opposed to a legislative mandate that would require airlines to do what they promised to do, that is: (1) define what constitutes a long, onboard delay, (2) set a time limit on delay durations before deplaning passengers, (3) incorporate such policies in their contracts of carriage and post them on their websites, and (4) work with airports to minimize long, on-board delays. With regard to other issues, such as the provision of meeting passengers' essential needs, a consistent policy across the industry would certainly be helpful to customers. We would certainly endorse that.

Question 7. In my statement, I said I am concerned that the airline industry is policing itself and that the DOT has taken a lackadaisical approach to its oversight responsibilities. Do you agree with this assessment?

Answer. The Department's OAEP is the division within the Office of the General Counsel that enforces the Department's air travel consumer protection rules. These rules encompass many areas, including unfair and deceptive practices and unfair methods of competition by carriers and travel agents.

The OAEP also has the authority to investigate and enforce violations of rules governing denied boarding compensation, access for travelers with disabilities, ticket refunds, and airline quality service performance reporting. When violations occur, the OAEP can pursue enforcement action, which may range from warning letters, to civil penalties, to litigation in U.S. District Courts.

In our 2006 review of selected airline customer service areas, we found that while the OAEP has made efforts to enforce civil rights violations, it needs to improve its oversight of consumer protection laws, including its efforts to monitor compliance with the terms and conditions of enforcement actions. In recent years, the OAEP has not conducted onsite compliance reviews; instead, it relies on air carriers' self-

certifications and company-prepared expense summaries submitted without supporting documentation.

We also found that the enactment of new laws such as AIR-21 mandated several additional consumer protection responsibilities to be carried out by the OAEP, including: a new aviation civil rights provision; a provision requiring individual, comprehensive investigations of each disability-related complaint received by the OAEP; a provision extending the air carrier disabled passenger discrimination law (Air Carrier Access Act) to foreign air carriers; and new data collection and reporting requirements. The new workload has drawn OAEP resources away from its more traditional consumer protection activities. Traditional consumer protection activities that have been curtailed include investigating the availability of advertised fares and consumers' ability to redeem frequent flyer award.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
HON. CALVIN L. SCOVEL III

Question 1. Mr. Scovel, do you think the legal authority Mr. Reynolds cites under 49 U.S.C. 41712 provides an adequate framework for the Department to address airline consumer complaints? Do you think that the current process is effective?

Answer. 49 U.S.C. Section 41712 provides indirect rather than direct authority to address airline consumer complaints. During our work on airline customer service issues over the last several years, we have found that, historically, the broad unfair and deceptive practice authority in section 41712 has not been used effectively by the Department to address airline customer service issues.

Question 2. It seems to me that it is a high hurdle to translate airline passenger complaints into the language of an unfair and deceptive practice. For example, in Mr. Hudson's testimony, he says airlines have an incentive to schedule flights at the most popular times even if they know that the scheduled times cannot be met due to airport capacity and overcrowding. Do you know if the Department has looked into this issue at all?

Answer. First, the Department maintains—and we agree—that 49 U.S.C. Section 41712 provides the legal authority to pursue investigation and take enforcement actions for unrealistic scheduling practices. The theory is that when airlines schedule flights that rarely arrive or depart as scheduled, their actions are deceptive to the consumer.

Second, we understand that the Department has launched an investigation into unrealistic scheduling practices and has sent investigatory letters to all major carriers to understand how a flight could be late 70 or 80 percent of the time for 2 to 3 consecutive months.

Question 3. Should the current rules be changed to allow the Secretary explicitly to initiate investigations based on airline passenger complaints?

Answer. The Office of the Secretary has such authority, through the Office of General Counsel, to initiate investigations based on airline passenger complaints and shall, by law, investigate all complaints it receives from air travelers with disabilities. In our 2006 review on airline customer service issues, we found that the Department oversees and enforces air travel consumer protection requirements with a focus on investigation and enforcement of civil rights issues, including complaints from passengers with disabilities. Investigations based on other airline passengers complaints, such as availability of advertised fares and consumers' ability to redeem frequent flyer award, are limited and the Department can only take enforcement action when violations occur.

But, when DOT discovered violations and assessed penalties, it almost always either forgave the penalty as an incentive for the air carrier's future compliance or offset a significant portion of the penalty if the air carrier agreed to improve service to the consumer above and beyond what is required by existing rules or the air carrier's contract of carriage. DOT's follow-up monitoring of compliance with these conditions was limited, and, in some cases, there was no follow-up monitoring at all. In recent years, DOT has not conducted onsite compliance reviews; instead, it relies on air carriers' self-certifications and company prepared reports submitted without supporting documentation.

Question 4. Should the Office of the Secretary have explicit authority to penalize a carrier if it finds it is engaged in an unfair or deceptive practice?

Answer. 49 U.S.C. Section 41712 provides the Office of the Secretary with authority to take enforcement actions when it finds an air carrier engaged in unfair and deceptive practices. When violations occur, the Department pursues enforcement ac-

tion, which may range from warning letters, to civil penalties, to litigation in U.S. District Courts.

Question 5. Do you think the Department might benefit from looking into how the Federal Trade Commission addresses unfair and deceptive practices and unfair methods of competition?

Answer. During our 2006 review of airline customer service issues, we met with Federal Trade Commission lawyers and examined the Commission's model for best practices. The Department would benefit from learning more about how the Federal Trade Commission handles the industries it regulates.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARIA CANTWELL TO
JAMES C. MAY

Question. You testified that market mechanisms will bring about the appropriate changes in addressing airline passenger service complaints. At larger airports, where there are multiple carriers competing on routes, I can understand your point. But as the Subcommittee has learned in earlier hearings, there are a number of regional and smaller markets where consumers have limited choices to get from point A to B. In these instances, I am concerned that there is not sufficient competition for market mechanisms to sort things out on its own. How do you respond?

Answer. The fact that there may be fewer flight choices at some airports does not affect the marketplace impact on air carriers with respect to customer service because this is not an airport-specific or market-specific issue. In today's world, customer service problems at even the smallest commercial service airports draw media coverage and attention.

My comment about market mechanisms and customer service relates to the fact that our airline members have set national policies for the treatment of passengers in their contracts of carriage and on their websites. Those *national* policies on customer service differentiate among passenger airlines; they differentiate our carriers as well as non-ATA airlines from each other.

That policy is the same for very rural, middle-sized or large airports. So while only one airline may serve a very rural area, there is competition among the carriers on a national basis to offer quality service. This creates market incentives for each airline to offer reliable and efficient customer services throughout the Nation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY MARIA CANTWELL TO
EDMUND MIERZWINSKI

Question 1. As you know, in 2000, existing airlines agreed to include an Airline Customer Service Commitment into their customer agreements, called "conditions of carriage," which are legally enforceable by the customer against the airline. How difficult is it for consumers to enforce these agreements? Do you have any good examples?

Answer. It is U.S. PIRG's understanding that only some airlines have made their Customer Service Plan (CSP) commitments part of their Contract of Carriage. Of the 8 airlines that the Aviation Consumer Action Project and the Coalition for an Airline Passengers' Bill of Rights recently surveyed for the CAPBOR Airline Stranding Report Card, as of 6/12/07 United, Delta, Continental and Southwest had CSPs that were not legally binding, American had some essential needs commitments in its contract of carriage but these were qualified as "subject to availability", and only US Airways, JetBlue and Northwest do include their CSP commitments in their contract of carriage.

But the CSPs—even if in the Contracts of Carriage—are not enforceable as a practical matter because:

- (a) airlines claim Federal law (using language in the Airline Deregulation Act of 1978) pre-empts any legal action in state courts, including small claims courts where such enforcement would normally occur,
- (b) such claims generally could not be brought in Federal courts for jurisdictional and cost reasons,
- (c) the DOT and airlines have no arbitration or dispute resolution system as is customary for consumer disputes in many industries (the CSPs typically only provide that the airline will "respond" to a customer complaint/claim within 60 days), and no provision for a neutral decisionmaker for customer disputes,
- (d) there is no penalty for violations of CSPs and all Contracts of Carriage state they exclude punitive damages, consequential damages, out of pocket expenses

for alternate transportation and expenses, pain and suffering, inconvenience, therefore generally limiting damages to ticket refunds or lost baggage compensation up to the regulatory limit of \$3,000, etc.

What is needed are specific provisions that are required by statute or regulation to protect consumers that must be included in the contract of carriage as is customary for insurance contracts, and most other contracts of adhesion that are imposed on consumers by providers of services to the general public, where there is no realistic possibility of negotiation of the terms of the contract. Also enforcement provisions that are low cost and speedy (like small claims court or non-binding arbitration with time limits) are a necessity for consumer disputes. Another possibility is to provide for treble damages and/or attorney fees where an airline rejects a customer claim that is later upheld by a court or arbitrator. Fines for a pattern of CSP violations or egregious behavior or bad faith rejections of consumer claims should also be imposed by DOT. And because DOT has a long history of lax or no enforcement and waiving the low fines it does impose, consumers should be empowered as in antitrust cases to bring class actions or enforcement actions in the public interest in court to stop deceptive, unfair, bad faith, or fraudulent airline practices with treble damage provisions (such as the practice of confining passengers for extended periods in aircraft to prevent "passenger migration" and avoid refunds and other expenses associated with flight cancellations and extended delays now apparently used by American Airlines).

Question 2. Do you believe the Department and consumers would benefit by DOT creating a senior position of "consumer advocate", among other things, to address airline passenger complaints?

Answer. We understand that a DeFazio amendment passed twenty years ago provided for such an office and even a phone number, but that it has never been funded, staffed or advertised. A consumer advocate at DOT could be useful, but with such a history of such positions being created but not funded nor given enforcement or defined powers and duties shows they have limited effect and can be ignored with impunity if the regulator or airline chooses. Such an advocate should have the power to go into court on behalf of consumers for relief if the regulator or airline is unresponsive (this is a power which state attorneys general usually possess but consumer agency advocates generally do not). Such an advocate could also be empowered and given the duty to propose rules, remedial legislation, submit *amicus* briefs, intervene in disputes of general interest, issue an annual report on the status of airline passenger customer service rights and problems.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
KEVIN P. MITCHELL

Question 1. In your testimony, you state that Department enforcement of existing carrier commitments, regulations and laws would address many of the concerns raised. Do you believe that the Department's current enforcement serves as an adequate deterrent?

Answer. I do not believe the DOT/FAA is aggressive enough in enforcement action or just using the Bully Pulpit to improve airlines' responsiveness.

Question 2. In your testimony, you state that the FAA's recent rules regarding planes taking off when ice pellets are falling may have made the JetBlue situation worse. My understanding is the FAA is concerned that ice pellets will stick to a plane's wings and throw off its aerodynamics. In a sentence or two can you explain what the basis of the disagreement with the FAA is about regarding this rule? Do you know if the FAA is reviewing its rule?

Answer. The issue here is that the FAA was not inclusive or effective enough in its rulemaking regarding the pellet issue. There was confusion among the airlines and among FAA inspectors about the rule and its interpretation.

Question 3. In general, do you believe that there are actions the FAA can take with respect to how air traffic controllers at an airport deal with outbound flights during extreme weather situations that could improve the situation for air passengers? Would these changes require legislation, a rulemaking, or could they just be implemented administratively?

Answer. There are common sense things that can help such as (depending on the configuration of a given airport) allowing a plane to return to a gate without losing its takeoff slot.